IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1720

WORLDWIDE CHURCH OF GOD, INC., *et al.*,

Petitioners,

vs.

THE STATE OF CALIFORNIA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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Statement of the Case

This is an action the purpose of which is to protect the assets of three California nonprofit charitable corporations, one of which is a church, from fraudulent misappropriation for the private benefit of persons in control thereof. The action seeks to compel an accounting from defendants for their misappropriation of charitable assets, and any further equitable relief shown to be warranted by the accounting. It was brought by the Attorney General of the State of California as the only party other than the accused wrongdoers having the legal standing under California law to do so. (See *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750.)

Originally participating as plaintiffs with the Attorney General were six concerned Church members

whom the Attorney General gave permission to participate therein as "relators" (to file suit on the relation of the People of the State of California). The relators subsequently withdrew from the case and plaintiff the People of the State of California filed a First Amended Complaint[1] alleging in substance as follows:

1. Defendant Worldwide Church of God, Inc. is a California nonprofit corporation organized exclusively for charitable and religious purposes; all of its assets are dedicated irrevocably to such purposes as set forth in its articles of incorporation. Defendant Ambassador College, Inc., likewise a California nonprofit corporation, was organized exclusively for educational purposes and all of its assets are dedicated irrevocably to those purposes as set forth in its articles of incorporation. Finally, defendant Ambassador International Cultural Foundation, Inc. is also a California nonprofit corporation organized exclusively for charitable purposes, and all of its assets are dedicated irrevocably to such purposes as set forth in its articles of incorporation. All three corporations are exempt from taxation as charitable entities. (The three charitable corporations will hereafter sometimes be referred to as the Church, College, and Foundation, respectively.)

2. The Church, College and Foundation as well as the individual named defendants as officers and directors thereof, hold and are responsible for the assets of the three charitable corporations as trustees subject to supervision by the Attorney General and the California courts.

3. The Church, College, Foundation and individual named defendants are required by law to account to

[1]A copy of the First Amended Complaint appears as Appendix A hereto.

the court for all assets received, expended or held by the charitable corporations.

4. An accounting is needed from the charitable corporations and individual defendants because the individual defendants have been and are siphoning off and diverting to their own use and benefit assets of the Church, College and Foundation on a massive scale.

5. The Church, College and Foundation are under the primary control of the individual defendants who are themselves accused of diverting the assets of the charitable corporations to their own benefit.

6. The appointment by the court of a receiver pendente lite of the charitable corporations is necessary in order to prevent continuing misappropriation of funds, massive liquidation of assets and destruction and/or removal of the records of the individual defendants' wrongdoing.

The order of March 12th appointing a receiver pendente lite[2] was based upon the evidentiary hearing in the trial court on January 10th, 11th and 12th, 1979.[3] There is no question that the evidence received and considered by the trial court at that time was amply substantial to sustain the findings and conclusions. Petitioners had ample opportunity upon notice to present testimony, declarations and argument to

[2]Appendix G to the Petition for Certiorari includes the minute order of March 12 and formal written order dated March 16.

[3]A receiver was first appointed *ex parte* on January 2, 1979. The appointment was confirmed by order dated January 19, 1979. The appointment was confirmed by order dated January 19, after the hearing of January 10-12. The receivership was then dissolved by order dated March 2, but reimposed on March 12.

the court, as well as to cross-examine witnesses presented by the State. The transcript of that hearing is 413 pages in length.

At the January 10-12 hearing, defendant Stanley Rader testified (Rptr. Tr. 141-171)[4] to numerous self-dealing transactions between himself and the Church during the long period of time when he served as its general counsel, executive director and/or chief advisor to Herbert W. Armstrong, the pastor general of the Church. Among other things, Rader admitted that he holds title to a house in Tucson, Arizona which has been bought and paid for with Church funds; that he had taken title to a house in Beverly Hills which was bought and later maintained to a large extent with Church funds, and which he sold in 1978 for $1.8 million, pocketing the proceeds; that he had organized an advertising agency to handle the Church's media time purchases for commission; that an accounting firm that he had organized (defendant Rader, Cornwall, Kessler and Palazzo) did the accounting work for the Church; that the law firm with which he was associated (Rader, Helge and Gerson) did the Church's legal work; and that he had organized a company which purchased aircraft and then leased them to the Church at a profit.

There was also substantial evidence from which the trial court could conclude that records had been removed from church premises after the initial appointment of the receiver, and in violation of court order. Despite his emphatiac denials, there was substantial evidence that John Kineston (Rader's chauffeur and

[4]Portions of the transcript of the January 10-12 hearing appear in Appendix B hereto.

administrative assistant) had removed Church records from Church premises after the receiver was appointed, and that he had entered the Church's data processing building during the night time, although it was supposed to be locked and secured under direction of the receiver in order to safeguard the Church's records. (Tr. pp. 229-235; testimony of Roberson and Morgan, Tr. pp. 235-250 and 258-260.)

Likewise, although Virginia Kineston (Rader's executive secretary) had filed a declaration denying that shredding of Church records had ever taken place (Tr. p. 222), substantial evidence was produced to show that such shredding had in fact taken place, and Mrs. Kineston herself ultimately admitted it. (Tr. pp. 216-228; 262-266.)

The trial court may also have become skeptical about the veracity and good faith of the petitioners when it became apparent that three different versions of the bylaws of the Church, varying from one another on crucial points, were apparently in existence at the same time (Tr. pp. 366-368).

The trial court confirmed the original appointment of a receiver pendente lite in a written order dated January 19, 1979. (Appendix E to the Petition.) The court ordered that the receiver was to supervise and monitor only the business and financial operations of the Church and conduct an audit thereof. He was ordered not to interfere even with those business and financial operations except to the extent he believed it necessary to protect assets from continuing misappropriation. Thus the court ordered a very limited receivership, carefully tailored to accomplish the narrow purposes of securing a financial audit, safeguarding

financial records and preventing any continuing misappropriation of funds. In that order, the receiver was further instructed not to interfere with the ecclesiastical functions of the Church. The receiver was given the right to fire employees of the Church but not to affect the standing or membership of any such employees in the Church. So the trial court assiduously sought to avoid interference in matters of religious doctrine and practice. (Appendix E to the Petition, p. 30.)

Upon motion of the petitioners themselves to dissolve the temporary receivership imposed by the January 19th order, the trial court on March 2, 1979 dissolved the receivership and substituted an injunctive order. That motion asserted that the objectives of the receivership (to secure an accounting and safeguard church assets) could be achieved through injunctive orders "with which defendants assured the court they would comply." (Order Dissolving Receivership dated March 2, 1979, attached to petitioners' Application for Stay in this Court as Exhibit F.) Accordingly, the trial court ordered defendants to give the Attorney General access to the financial records of the Church, College and Foundation for the purpose of obtaining an accounting. (See Petition, p. 9.) The court reserved jurisdiction to reinstate the receivership if that proved necessary to protect charitable assets and secure a proper accounting from the defendants. (Exhibit F to Application for Stay, p. 3.)

Such reservation of jurisdiction to reinstitute the receivership indeed proved to be necessary when the defendants repudiated their assurances of cooperation with the injunctive order, filed an appeal from that order, and asserted that all mandatory aspects of the injunctive order were stayed pursuant to California

law pending appeal. The court on its own motion thereupon reinstituted the receivership by the minute order of March 12, 1979, asserting that "the status quo of the assets and records must be maintained pending appeal." (Appendix G to the Petition, p. 39.) However, the order further provided that reinstatement of the receivership would be stayed if defendants posted a $1 million appeal bond. Defendants have posted such a bond.

The order of March 12 reinstating the receivership is reviewable by direct appeal. (Cal. Code Civil Proc., § 904.1(g).) That order is now stayed under its own terms by reason of defendants posting a $1 million appeal bond in the form of nearly 900 individual undertakings. Plaintiff has decided not to challenge those undertakings.[5] Therefore, the receivership will remain stayed until petitioners' appeal is finally decided by the California courts.

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[5]On May 25, 1979, plaintiff withdrew exceptions, previously filed, to the undertakings. A copy of such "Withdrawal" appears herein as Appendix D.

ARGUMENT

I

The Federal Constitutional Questions Are Not Properly Before This Court

A. The Federal Issues Are Not Ripe for Review.

The United States Code provides for review by the Supreme Court, whether by appeal or by certiorari, only of "final judgments or decrees rendered by the highest court of a State in which a decision could be had" on specified federal questions. (28 U.S.C. § 1257.)

The requirement of finality is not just a technicality, but "serves several ends: (1) it avoids piecemeal review by federal courts of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits federal review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs." (*North Dakota Pharmacy Board v. Snyder's Stores* (1973) 414 U.S. 156, 159. See also *Republic Natural Gas Co. v. Oklahoma* (1948) 334 U.S. 62, 67-69; *Radio Station WOW v. Johnson* (1945) 326 U.S. 120, 123-124.)

> "The considerations that determine finality are not abstractions but have reference to very real interests—not merely those of the immediate parties but, more particularly, those that pertain to the smooth functioning of our judicial system." (*Republic Natural Gas Co. v. Oklahoma, supra,* at 69.)

The policy against premature constitutional adjudications demands that any doubt as to the finality of

a state court's judgment, upon which this Court's jurisdiction to review is conditioned, be resolved against jurisdiction; and the possibility that matters left open by a state court's judgment may generate additional constitutional questions requires a finding that the finality essential to a review of such judgment does not exist. (*Republic Natural Gas Co. v. Oklahoma, supra,* at 71-72.)

No "self-enforcing formula" can be devised to define when a judgment is final. (*Republic Natural Gas Co. v. Oklahoma, supra,* at 67.) In general, however, it may be said that the state court judgment must be final in the following respects to be within the Supreme Court's appellate jurisdiction: it must be subject to no further review or correction in any other state tribunal, and it must be an effective determination of the litigation and not of merely interlocutory or intermediate steps therein (*Market Street R. Co. v. Railroad Commission* (1945) 324 U.S. 548, 551), or it must end the litigation by fully determining the rights of the parties so that nothing remains to be done by the trial court except the ministerial act of entering the judgment which the appellate court has directed (*Republic Natural Gas Co. v. Oklahoma, supra,* at 68). Lastly, it must be clear that definitive disposition has been made of all the legal and factual issues in the case, and not of just the important ones or the federal ones. Thus, the requirement of finality is not met "merely because the major issues in a case have been decided and only a few loose ends remain to be tied up—for example, where liability has been determined and all that needs to be adjudicated is the amount of damages." (*Republic Natural Gas Co. v. Oklahoma, supra,* at 68.)

By the instant Petition, the defendants in a state court action for an accounting and other equitable relief brought by the California Attorney General to safeguard the assets of various charitable nonprofit corporations seek to have this Court review the denial by the California Supreme Court of their application for a prerogative writ, by which petitioners sought immediate review of the trial court's order appointing a receiver pendente lite. Petitioners apparently now contend that the appointment of a receiver (indeed, the lawsuit itself) violates their rights under the Religion Clauses of the First Amendment to the United States Constitution.

Respondent submits that under the foregoing criteria, the decision by the California Supreme Court denying petitioners' application for a prerogative writ is clearly not a "final" decision within the contemplation of Title 28, United States Code, section 1257. Certainly that decision, which has been rendered at the virtual inception of this litigation, is not a definitive disposition of all the legal and factual issues of this case; certainly it is not "an effective determination of the litigation [but only of an] interlocutory or intermediate step therein" (*Market Street R. Co. v. Railroad Commission, supra,* at 551); certainly it is not a final determination of the rights of the parties so that nothing remains to be done by the trial court (or the state appellate courts, for that matter) except a ministerial act. Petitioners argue that the First Amendment issues are ripe for review by this Court at this time because the Church "will continue to suffer incalculable harm so long as this proceeding continues." (Petition, p. 16.) Since the receivership has been stayed pending appeal in the state court, however, it no longer represents even a possibility of any continuing harm. Respondent thus submits that the federal constitutional questions which petitioners seek to present are not ripe for review.

B. Principles of Federalism Require the Court to Abstain.

A review of a lower federal or state court decision on a writ of certiorari is not a matter of right, but of sound judicial discretion. The writ should be granted only when there are special and important reasons therefor. (28 U.S.C. Rules of the Supreme Court, Rule 19; *Durham v. United States* (1971) 401 U.S. 481, 483.)

In exercising that discretion over the years, this Court has given recognition to various circumstances under which a federal court may decline to proceed with a review of a state court decision even though it has jurisdiction under the Constitution and statutes. This practical concept, generally referred to as the "abstention doctrine," cautions federal courts to stay the exercise of their power to review and assess state statutes in situations (1) where the case involves difficult and unsettled issues of state law which, if first decided by the state courts, might avoid the necessity for the federal courts to decide the asserted federal constitutional claims, (2) where there might be needless conflict with the administration by a state of its own affairs, and (3) where decision in a diversity case turns upon difficult and unresolved questions of state law. (R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 101-103 (5th ed. 1978); C. WRIGHT, LAW OF FEDERAL COURTS § 52 (3d ed. 1976).) In the recent landmark case of *Younger*

v. Harris (1971) 401 U.S. 37, Justice Black, speaking for the Court, described the doctrine as one of comity:

> ". . . that is, a proper respect for State functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. This, perhaps for lack of a better and clearer way to describe it, is referred to by many as 'Our Federalism' . . . . The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts . . . . What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." (*Younger v. Harris, supra,* at 44.)

In *Younger* it was held that federal courts should not enjoin pending state criminal prosecutions, even though the underlying state statute appears on its face to be possibly unconstitutional. The Court stated that the possibility of a "chilling effect" on First Amendment freedoms does not by itself justify federal intervention; nor are federal courts to test the constitutionality of a state statute "on its face" and then enjoin all action to enforce the statute until the state can obtain approval for a modified version thereof. A federal injunction

can run against a pending state criminal prosecution only on a "showing of bad faith, harassment, or any other unusual circumstance that would call for equitable relief." (*Younger v. Harris, supra,* 50-54.)

Although the Court in *Younger* did not speak to the situation in which a state has brought a civil action to enforce its laws, rather than a criminal prosecution, the general notion of "Our Federalism" that is at the heart of this decision certainly suggests that under ordinary circumstances a federal court should not interfere with civil actions in state courts in which the state, or an officer or agency of the state, is seeking to enforce state laws. For example, in *Lynch v. Household Finance Corp.* (1972) 405 U.S. 538, 560-61, Justice White, in a dissent joined by Chief Justice Burger and Justice Blackmun, stated that the considerations announced in *Younger* "are equally applicable where state civil litigation is in progress." This view has been confirmed in subsequent decisions.

In *Huffman v. Pursue, Ltd.* (1975) 420 U.S. 592, a state prosecutor brought an action to abate a public nuisance (to wit, a theatre showing allegedly obscene films). The defendant in the state action challenged the state statute on First Amendment grounds in an action in the United States District Court for declaratory and injunctive relief. In vacating the district court's decision holding the state statute unconstitutional, this Court held that the principles of *Younger* were applicable. This Court held that federal court intervention in such a state court proceeding is not justified unless the party seeking review establishes either (1) that the state proceeding is being conducted with an intent to harass or in bad faith, or (2) that the challenged statute is "flagrantly and patently violative of express

constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." (*Huffman v. Pursue, Ltd., supra,* 600-607, 610-611.)

In *Juidice v. Vail* (1977) 430 U.S. 327, this Court extended abstention principles to a federal civil rights suit brought by judgment debtors to enjoin state contempt proceedings, stating: "We now hold, however, that the principles of *Younger* and *Huffman* are not confined solely to the types of state actions which were sought to be enjoined in those cases." (*Juidice v. Vail, supra,* 334. The Court added:

> "Whether disobedience of a court sanctioned subpoena, and the resulting process leading to a finding of contempt of court, is labeled civil, quasi-criminal, or criminal in nature, we think the salient fact is that federal-court interference with the State's contempt process is 'an offense to the State's interest . . . likely to be every bit as great as it would be were this a criminal proceeding,' *Huffman, supra,* at 604, ... Moreover, such interference with the contempt process not only 'unduly interfere[s] with the legitimate activities of the Stat[e],' *Younger, supra,* at 44, . . . but also 'can readily be interpreted "as reflecting negatively upon the state court's ability to enforce constitutional principles."' *Huffman, supra,* at 604 . . . ." (*Juidice v. Vail, supra,* at 335-336.)

Finally, this Court has held that the principles of *Younger, Huffman* and *Juidice* are applicable to bar federal court interference (by entertaining a federal civil rights action) with a state's civil action to vindicate, by attachment of property, such important state policies as safeguarding its public assistance program against fraud. In *Trainor v. Hernandez* (1977) 431 U.S. 434, the State of Illinois had brought a civil action seeking the return of welfare payments obtained through fraud. The defendants in the state action brought a federal civil rights suit in the United States District Court seeking an injunction and a declaration that the state statute was unconstitutional. The district court held the state act invalid on its face. Upon appeal, this Court applied the foregoing principles of Federalism and held that the district court was in error in entertaining the civil rights suit.

In the case at bar, the State of California, acting through its Attorney General, has brought an action to safeguard the assets of various charitable nonprofit corporations from fraudulent misappropriation by the persons in control thereof. Clearly, by this action the State of California is seeking to vindicate its strong and legitimate public policies (1) against fraud and misappropriation, (2) that charitable assets be applied to charitable purposes, and (3) that the officers and directors of any corporation formed under state law operate that corporation in accordance with its articles of incorporation. Clearly, the state statute which petitioners seek to call into question (Calif. Corp. Code § 9505—Appendix B to the Petition) is not "flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whatever manner and against whomever an effort might be made to apply it." (*Huffman v. Pursue, Ltd., supra,* 600-607); nor can petitioners make any showing that the prosecution of this action is being conducted in bad faith or with an intent to harass.

Respondent submits that for this Court to interject itself into this matter at this early stage, before the state courts have had sufficient opportunity to decide any questions concerning the constitutionality of Corporations Code section 9505 and these proceedings, would be in clear and direct violation of the aforementioned principles of Federalism.

II

Pursuant to Ancient and Settled Legal Principles Religious Organizations Hold Their Assets in Trust for Their Religious Purposes Which Are Also Charitable Purposes, and the State Attorneys General Are Charged With the Responsibility of Enforcing and Supervising Charitable Trusts

The courts of California have always held without exception that the secular affairs of church corporations are subject to supervision by the Attorney General and the courts. (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850; *Wheelock v. First Presbyterian Church,* (1897) 119 Cal. 477.) In general throughout the United States religious purposes are regarded as charitable and trusts for religious purposes are enforced as charitable trusts. (See IV Scott on Trusts (3d ed.) § 371, p. 2880.)

The state attorneys general are charged with such duties of enforcement and supervision because the fulfillment of the purposes of charitable, including religious, organizations is thought to be of general benefit to society as a whole. In that sense, such entities are trustees of their assets for public benefit and hold such assets in trust for the religious or charitable purposes set forth in their governing documents. (*Pacific Home v. County of Los Angeles* (1951) 41 Cal.2d

844, at 851-852; *In re Metropolitan Baptist Church of Richmond, Inc., supra.* at 857.) Any diversion of such funds is a breach of trust. (*In re Metropolitan Baptist Church of Richmond, supra.* at 857; *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, at 759-760.) In California and in many other states the attorney general is the only party other than corporate directors or trustees (who in this case are the very persons accused of wrongdoing) who has standing to enforce a charitable trust. (*Holt v. College of Osteopathic Physicians & Surgeons, supra,* at 755-757; IV Scott on Trusts (3d ed.) § 391, p. 3006.) While the public as a whole is the beneficiary of all charitable trusts, members of the public (including in this case members of the Worldwide Church of God) have no clear authority to bring court actions to enforce a charitable trust.

This Court has recognized that the activities of religious organizations are of general benefit to society as a whole, and has on that basis held that a state grant of property tax exemptions to churches does not violate the establishment clause of the First Amendment. (*Walz v. Tax Commission* (1970) 397 U.S. 664, 680.) In discussing the public benefit aspects of religious organizations, Chief Justice Burger, speaking for the Court, observed:

> "New York, in common with the other states, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its 'moral or mental improvement,' should not be inhibited in their activities by property taxation or the hazard of loss of those properties for nonpayment of taxes. It has not singled out one particular church or religious

group or even churches as such; rather, it has granted exemption to all houses of religious worship within a broad class of property owned by nonprofit, quasipublic corporations which include hospitals, libraries, playgrounds, scientific, professional, historical, and patriotic groups. The state has an affirmative policy that considers these groups as beneficial and stabilizing influences in community life and finds this classification useful, desirable, and in the public interest." (397 U.S. at 672-673.)

In his concurring opinion in *Walz, supra,* Justice Brennan stated that:

"Government has two basic secular purposes for granting real property tax exemptions to religious organizations. First, these organizations are exempted because they, among a range of other private, nonprofit organizations contribute to the well-being of the community in a variety of nonreligious ways, and thereby bear burdens that would otherwise either have to be met by general taxation or be left undone to the detriment of the community." (397 U.S. at 687.)

"Second, government grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities. Government may properly include religious institutions among the variety of private, nonprofit groups that receive tax exemptions, for each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society." (397 U.S. at 689.)

Finally, in his separate concurring opinion, Mr. Justice Harlan observed in the same vein as follows:

"The statute that implements New York's constitutional provision for tax exemptions to religious organizations has defined a class of nontaxable entities whose common denominator is their nonprofit pursuit of activities devoted to cultural and moral improvement and the doing of 'good works' by performing certain social services in the community that might otherwise have to be assumed by government. Included are such broad and divergent groups as historical and literary societies and more generally associations 'for the moral or mental improvement of men.'" (397 U.S. at 696-697.)

It follows that the state has a strong interest in preventing and correcting the fraudulent misappropriation of the assets of religious entities. The purposes of the Worldwide Church of God include secular public benefit activities similar to those to which the above quotations make reference. (Petition, pp. 4-5.) Moreover, the church receives significant contributions from members of the public outside the church membership. (Petition, p. 4.)

Enforcement by the various state attorneys general of charitable (including religious) trusts is an ancient and nearly universal practice in this nation. Such a practice must not lightly be cast aside on constitutional grounds. As Chief Justice Burger observed in *Walz, supra*:

"Yet an unbroken practice of according the [tax] exemption to churches, openly and by affirmative state action, not covertly or by state

> inaction, is not something to be lightly cast aside. Nearly 50 years ago, Mr. Justice Holmes stated: 'If a thing has been practiced for 200 years by common consent, it will need a strong case for the Fourteenth Amendment to affect it. . . .'" (397 U.S. at 678.)

The supervision of charity by state attorneys general goes back far longer than even 200 years. The attorneys general and chancery courts of England had such supervisory powers prior even to the enactment of the English Statute of Charitable Uses in 1601. (Stats. 43 Elizabeth I, c. 4; IV Scott on Trusts (3d ed.) § 368.1, p. 2858, § 391, p. 3002.)

III

The First Amendment Does Not Excuse the Perpetration of Fiscal Fraud in the Name of Religion, nor Does It Shield the Perpetrators From Corrective Action in the Courts

The petitioners' arguments that the Attorney General's efforts in this action to uncover and correct misappropriation of charitable funds somehow impedes impermissibly the free exercise of religion are grounded in the premise that the courts will never be able to distinguish successfully between the financial and business affairs of the church and its charitable trust on the one hand and its spiritual and ecclesiastical affairs on the other. The essence of such an argument is that the business and financial activities of a church at every level are inextricably intertwined with its religious activities and the fulfillment of its religious purposes, that it is impossible for the state to separate the secular activities of the church from its religious

activities, and that state supervision of the church's secular activities is therefore unconstitutional.

That assertion notwithstanding, however, the law is not such an ass as to be unable to distinguish between secular matters (including fiscal fraud) and ecclesiastical belief. In *Cantwell v. Connecticut* (1940) 310 U.S. 296, while invalidating a conviction for alleged unlawful solicitation of funds for religious purposes, this Court nevertheless made it plain that "[n]othing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." (310 U.S. at 306.)

This Court has also made it clear that the rule prohibiting "entanglement" between church and state does not apply to cases involving "fraud, collusion, or arbitrariness." (See, *e.g., Gonzales v. Roman Catholic Archbishop* (1929) 280 U.S. 1, 16; *Maryland and Virginia Eldership v. Church of God* (1970) 396 U.S. 367, concurring opinion of Brennan, J., fn. 3, at 369.)

Even Justice Douglas, as staunch an advocate of religious freedom as has sat on the Supreme Court in recent times, observed succinctly that he had no intention of intimating or suggesting "that any conduct can be made a religious rite, and by the zeal of the practitioners swept into the First Amendment." (*Murdock v. Pennsylvania* (1943) 319 U.S. 105, 109.)

IV

The Purpose and Effect of the Attorney General's Enforcement Action Is to Halt and Correct Fraudulent Diversion of Church, College and Foundation Assets and Not to Interfere With Any Religious Doctrine or Practice

The complaint alleges that the individual defendants have fraudulently diverted assets of the church to their own benefit. It further alleges that the church is under the absolute control of some of those named defendants, chiefly Mr. Rader and Mr. Armstrong. Defendants make no claim that fraudulent diversion is permitted by church doctrine or practice, and of course any such claim would of itself be fraudulent. Thus, the purpose of this lawsuit, to halt and correct fraudulent diversion, does not impact in any way upon any religious doctrine or practice. Therefore, cases involving government regulations or actions which adversely affect religious doctrine or practice are not in point.[6]

Obviously, California, as well as other states, has a strong policy forbidding fraudulent diversion of corporate funds, whether or not the affected corporation is a church. Likewise, the state has a strong policy that the officers of any corporation formed under state law obey the provisions of its articles of incorporation and operate the corporation by means of lawfully selected board members and not by the individual fiat of one man. These are neutral policies of law and are ap-

[6]Even governmental action which does have some adverse impact upon religious practice will not violate the First Amendment if its purpose and primary effect is to advance a rational and legitimate secular governmental purpose. (See *Johnson v. Robison* (1973) 415 U.S. 361, 384; *Gillette v. United States* (1971) 401 U.S. 437, 462; *Braunfeld v. Brown* (1961) 366 U.S. 599, 607.)

plicable in the same manner to religious corporations as they are to secular ones. (See *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440 at 449.)

Thus, the bringing of an enforcement action by a state attorney general raising such issues can violate no First Amendment rights. However, the question may arise whether the manner of implementing such a lawsuit might have an adverse effect upon religious practices by interfering in some way with the religious functioning of a church. The instant suit calls for the equitable remedy of an accounting by the church as well as the other charitable corporations and individual defendants, and any equitable relief to which the accounting shows that the beneficiaries of the charities are entitled. The suit also requests the appointment of a receiver pendente lite to safeguard church assets from continuing misappropriation and church records from alteration or destruction during the course of the action. The question for this Court is whether such relief is necessary to advance a rational and secular governmental purpose (correction of fraud and violation of state corporation laws). That inquiry is facilitated in the instant case by the fact that the receivership has been stayed in the trial court pending appeal. Thus, the receivership in the posture of this case can presently give rise to no arguable continuing invasion of First Amendment rights.

We are left with the narrow question as to whether the Attorney General's attempt to secure an accounting from the financial records of the church, in order to determine the extent of any fraud, violates any First Amendment rights. Much of the alleged fraud in this case consists of transactions between defendant Rader or businesses controlled by him and the church,

college or foundation.[7] Under these circumstances of course, all of the records of such transactions are either in the possession of Rader or the charities. With few exceptions, there would be no other sources for such evidence.

Rader himself refuses to answer questions on a deposition, refuses even to appear for a deposition, invoking the Fifth Amendment right against self-incrimination. His refusal to answer questions and to account is itself wrongful conduct for a fiduciary, and it emphasizes the necessity of examining the financial records of the charitable corporations, which it is alleged he controls, in order to determine the extent of his wrongdoing.[8]

Moreover, mere examination and copying of financial documents and questioning of witnesses to financial transactions can have little effect on either the religious practices or administration of the church. Whatever minor imposition this may present to the custodians of church financial records and to church employed witnesses who have knowledge of financial transactions is far outweighed by the legitimate secular governmental interest in correcting fraudulent diversion of corporate assets.

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[7]Such self-dealing transactions by fiduciaries are absolutely prohibited under California law. (Cal. Civ. Code, Secs. 2228-2235.) California courts hold that such prohibitions apply not only to trustees of charitable trusts but to officers and directors of charitable corporations as well. See, *e.g., People v. Larkin* (N.D. Cal. 1976) 413 F.Supp. 978, 981-982; *Lynch v. John M. Redfield Foundation,* (1970) 9 Cal.App.3d 293, 301.

[8]Rader was ordered by the trial court to appear on May 29, 1979 for his deposition. Rader refused to appear as ordered See Appendix C hereto containing Declaration of Lauren R. Brainard dated June 1, 1979, Exhibit A to Motion (filed in the trial court) for Order Holding Rader in Contempt.

This Court has approved far more extensive burdens upon individuals' rights to practice their religions in situations where such burdens were necessary to advance legitimate governmental interests. In *Gillette v. United States,* (1971) 401 U.S. 437 it was held that so-called selective conscientious objectors who objected only to the Vietnam War as an unjust war, rather than to war in any form, may constitutionally be required to perform military service. The court held, at page 462, that "incidental burdens [on the exercise of religion may be] justified by substantial governmental interests." In *Johnson v. Robison,* (1973) 415 U.S. 361 it was held that a conscientious objector who performed alternate civilian service in lieu of military service may constitutionally be denied veteran's educational benefits by the United States Government. In *Braunfield v. Brown* (1961) 366 U.S. 599, a Pennsylvania law requiring businesses to close on Sundays was upheld against the claim that it was unconstitutional as applied to merchants whose religion observed Saturday as the Sabbath and whose religious beliefs compelled them to close their businesses on Saturday. The state's interest in obtaining one day a week of entire peace and quiet was held to outweigh the burden upon the Sabbaterian merchants who were forced to close their businesses both Saturday and Sunday to their great economic detriment. (366 U.S. at 607.) Finally, in *Prince v. Massachusetts* (1944) 321 U.S. 158, the court held that a state child labor law forbidding minors from selling literature in public places did not violate the First Amendment rights of a child and her guardian where the guardian furnished the minor with religious literature and permitted her to distribute the same on the streets. It was held that

the state's interest in protecting children outweighed the consequent burden upon the religious practices of both guardian and child. (321 U.S. at 170.)

V

The State Does Not Seek to Change the Governance of the Church's Ecclesiastical Affairs

Petitioners assert without foundation that the state attempts in this suit to reorganize the church's structure from hierarchical to congressional form. Petitioners further claim that the state seeks to remove church officials without further explaining that the state does not seek to remove or affect in any way the ecclesiastical office or position of any ecclesiastical church authority or official.

The state does seek an order directing the church, college and foundation to comply with the terms of their articles of incorporation and the state laws under which such corporations were organized. Petitioners contend that such an order would infringe upon First Amendment rights. But they do not explain to what extent, if any, the terms of those articles or of California corporation laws conflict with church doctrine or practice.

Furthermore, if there were such a conflict, the question would arise as to why church leaders undertook to incorporate under such laws and to write such requirements into their articles of incorporation. The church was not compelled to incorporate under the California General Nonprofit Corporation Law (Calif. Corp. Code § 9000 et seq.). It could have used a different form of organization, such as a corporation sole (Calif. Corp. Code § 10000 et seq.) if religious

belief or practice had required church business to be dictated solely by a single individual without consultation with or permission of any board of directors.

The state seeks to remove individual defendants (who are not ecclesiastical officials) who may be found to have committed fraud from holding any office or employment in any of the subject charitable corporations, under the well-settled equitable principle that the court may remove trustees who are guilty of breaching their trust. We do not suggest that the court may remove any person from any ecclesiastical position which he may hold. However, if he misuses church funds such a person may constitutionally be disabled from doing so again by being removed from corporate office.

Conclusion

The purpose and effect of the state's action is to prevent and correct fiscal fraud in the administration of a church and the charitable corporations which it controls. Fiscal fraud is not a part of any religious doctrine or practice, and its prevention and correction cannot interfere with any such doctrine or practice.

The receivership pendente lite has been stayed and can therefore give rise to no continuing infringement of any First Amendment right. Petitioners have rights of direct appeal in state court and are proceeding to exercise them.

It is not inimical but rather it is vital to the preservation of religious freedom that the state correct fraudulent misappropriation of the assets of religious corporations. If there were no remedy for such misappropriations, the right of the public and of church members to have their contributions applied to the religious

purpose which they intend could be violated at will by the unscrupulous.

For the foregoing reasons, respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX A.

First Amended Complaint for (a) Accounting, (b) Removal of Trustees, (c) Equitable Relief, (d) Appointment of a Receiver, and (e) Injunctive and Other Appropriate Relief.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California Nonprofit Corporation, Ambassador College, Inc., a California Nonprofit Corporation, Ambassador International Cultural Foundation, Inc., a California Nonprofit Corporation, Wilshire Travel, a Proprietorship, Worldwide Advertising, Inc., a California Corporation, Gateway Publishing, Inc., a California Corporation, Mid-Atlantic Leasing, a partnership, Excelsior Leasing, a Corporation, Environmental Plastics, Inc., a Texas Corporation qualified to do business in California, Herbert W. Armstrong, Stanley R. Rader, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, Henry Cornwall, Ralph Helge, the Accounting Firm of Rader, Cornwall, Kessler and Palazzo, and Does 1 through 100, Inclusive, Defendants. No. C 267-607.

AS A FIRST CAUSE OF ACTION FOR ACCOUNTING, PLAINTIFF ALLEGES:

1. George Deukmejian is the duly constituted Attorney General of the State of California, and as such is charged with the supervision of all charitable organizations within this state and with the supervision of trustees and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes. This action was originally brought by and on behalf of

the People of the State of California on the relation of individuals who had been granted leave to sue by the Attorney General. Its purpose is to correct the abuse of charitable trusts. The six individually designated relators have since withdrawn, and sole responsibility for the action now rests with the Attorney General.

2. Defendant Worldwide Church of God, Inc. (hereinafter the Church) is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Church was organized exclusively for charitable and religious purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation a copy of which is attached hereto and incorporated herein as Exhibit 1. At all times since its incorporation in 1934 it has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

3. Defendant Ambassador College, Inc. (hereinafter the College), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The College was organized exclusively for educational (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 2. At all times since its incorporation in April 1951 it has been exempted from taxation by the State of California under Revenue

and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

4. Defendant Ambassador International Cultural Foundation, Inc. (hereinafter Foundation), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Foundation was organized exclusively for cultural (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes, such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 3. At all times since its incorporation in March 1975 the Foundation has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

5. By reason of the exemption from tax of the property of the Church and the College and the Foundation, as above alleged; and also by reason of the fact that all donations and contributions to the Church, the College and the Foundation have been deductible from income by the donors and contributors for purposes of computing their federal and state income taxes; plaintiff is informed and believes, and therefore alleges, that the Church, the College and the Foundation have enjoyed substantial public subsidies amounting over the last ten years to more than $150,000,000.

6. Defendants Stanley R. Rader, Herbert W. Armstrong, Ralph Helge, Henry Cornwall, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, and Does 1 through

50 are and at all relevant times have been either officers, directors, or full-time employees of one or more of the above-named charitable entities (hereinafter referred to collectively as the Church, the College and the Foundation) or one or more of the following named for-profit defendants, or both. All of the acts herein complained of have been done with their knowledge and complicity, and under their supervision. In addition, each individual defendant is legally responsible for the act and omissions of his co-trustees.

7. Plaintiff is informed and believes, and on that basis alleges, that defendants Worldwide Advertising, Inc. and Gateway Publishing, Inc. are California corporations; that Does 51 through 100 are corporations, partnerships or other business entities; that Environmental Plastics, Inc. is a Texas corporation qualified to do business in California; that Rader, Cornwall, Kessler and Palazzo is an accounting firm formed either as a California professional corporation or a partnership; that Mid-Atlantic Leasing is a corporation or partnership; that Wilshire Travel is a proprietorship; that Excelsior Leasing is a Pennsylvania corporation qualified to do business in California; that the above are hereinafter referred to collectively as the for-profit defendants. Plaintiff is informed and believes, and on that basis alleges, that each of the for-profit defendants is owned or controlled by one or more of the officers or directors of the Church, the College or the Foundation, including particularly the defendant Stanley R. Rader; that funds and property contributed to the charitable entities are freely transferred among them and the for-profit defendants; that financial and business records of the charitable entities have been and continue to be in the custody and possession of the for-profit

defendants; and that the unity of record ownership and actual control among the charitable entities and the for-profit defendants, and the course of dealing between them, has been for many years and is now such that for all purposes of this accounting, it would be unjust and inequitable to recognize any separate existence among them at all. The exact status and constitution of the for-profit defendants, and their precise relationship with the charitable entities, are matters not known to plaintiff at this time, but are peculiarly within the knowledge of the defendants; and plaintiff will ask leave of the Court to amend this Complaint to show their true status and constitution, and the exact nature of their relations with the charitable entities when the same have been ascertained.

8. The true names and capacities of defendants Doe (whether individual, corporate, associate or otherwise) and the true nature of their relationship with the other defendants, is presently unknown to the plaintiff, but is peculiarly within the knowledge of the individual named defendants. Plaintiff, will ask leave of the Court to amend this complaint to show the true names and capacities of the defendants Doe, and the true name of their relationship, when the same have been ascertained.

9. Defendants HERBERT W. ARMSTRONG and STANLEY R. RADER are and at all times pertinent to this Complaint have been in full and complete control of the Church, the College, the Foundation, and all of their affairs. HERBERT W. ARMSTRONG is and has been Pastor General of the Church ever since its formation, and has been an officer and director of the College and Foundation as well as the Church at all times since their formation. Defendant Stanley

R. Rader has acted as general counsel and chief financial adviser of the three entities for the past fifteen years, and for the past four years has acted and is presently acting in at least the following capacities: as director, executive vice-president, executive director, vice-president for financial affairs, secretary-treasurer and general counsel.

10. The Church, the College and the Foundation, as well as the individual named defendants (including Does 1-50), hold and are responsible for the assets of the three charitable entities, as trustees, subject to supervision by the Attorney General and ultimately by this court. The ultimate beneficiary in each instance is the public which benefits generally from all charitable endeavors. None of the defendants has or may legally have any proprietary interest in the assets and properties of the Church, the College or the Foundation, nor in their books and records.

11. The Church, the College, the Foundation and the individual named defendants as their officers and directors are required by law to account to the public and this court for all funds received, expended, or held by the three entities. Notwithstanding this duty to account, and repeated requests by plaintiff and members of the Church, these defendants have failed and refused, and still fail and refuse, to make any such accounting at all.

12. The need for an accounting by defendants in this case is particularly acute for each of the following reasons:

(a) Plaintiff is informed and believes, and on that basis alleges, that for a period exceeding

ten years the individual and for-profit defendants (including Does 1-100), acting in concert with and under the direction of defendants Armstrong and Rader, have been and are siphoning off and diverting to their own use and benefit assets and properties of the Church, the College and the Foundation, on a massive scale increasing in the last several years to millions of dollars per year, and causing substantial fiscal deficits in their operation.

(b) Although much of the funding for the Church, the College and the Foundation is generated through contributions and other payments and tax subsidies provided by the public as a whole, a major source of funds for the Church has come from tithing of its members. As Pastor General of the Worldwide Church of God, and as the self-proclaimed Ambassador of God on earth, Herbert W. Armstrong has directed all members of the Church to contribute the first ten percent (10%) of their gross income. Failure to do so, according to Armstrong's published disseminations to the members, is ". . . STEALING from GOD . . . and is SIN, which will cost you your SALVATION!" By reason of such representations and exhortations, a special fiduciary relationship has been created in which Mr. Armstrong, Mr. Rader and the other individual defendants owe the highest duty of accountability, not merely to the general public which is interested in preventing fraud, but also the members and former members who have not only given their money but have also placed their trust in the defendants to use it strictly for God's Work.

(c) In the solicitation of funds, defendant Armstrong has not always been candid. From time to time throughout the past ten years the Church has sent out special and urgent requests for contributions to be made at great personal sacrifices to the donors. Attached hereto and incorporated herein as Exhibit 4 is one such request dated March 30, 1970. The letter speaks of a "tight money situation" requiring cutbacks in Church salaries, publications and operating expenses in all departments of the Work;" it states that "God's Work" needs "IMMEDIATE CASH"; and on the suggestion of ". . . Mr. Rader, our legal counsel and financial adviser," members are asked to borrow whatever they can, so long as they do not lower the income for the "Work" through the rest of the year. The true nature of the alleged fiscal emergency is exemplified by two purchase orders attached hereto and incorporated herein as Exhibit 5. Mr. Armstrong's letter of March 30, 1907, failed to disclose, among other pertinent facts, the purchase for his Pasadena residence of a $6,090.00 crystal candelabra on January 2, 1970, and French porcelain vases for $2,079.00 on March 31, 1970.

(d) In addition to the first 10% tithe (for God), and a second 10% tithe (to provide for the member's expenses at the annual Festivals), there is a third tithe imposed by the Church on its members consisting of ten percent (10%) of their gross income every third year. Throughout the past ten years this contribution has been expressly solicited as a special fund for widows and orphans. A trust has been imposed on these

funds which requires that they be used only for such purposes. Plaintiff is informed and believes and thereupon alleges that an accounting has never been rendered of the receipt and disposition of these funds, and that they have been diverted to purposes other than those for which they were solicited and donated.

13. Because the named individual defendants are now, and at all times pertinent to this action have been in full, effective and exclusive control of all the property, assets, records and administrative facilities of the Church, the College and the Foundation; and because they have consistently denied and still presently deny meaningful access to such records by the Attorney General of the State of California, plaintiff has no alternative but to make many of the allegations of this complaint on information and belief. Plaintiff will ask leave of the Court to amend this complaint in all pertinent respects when the particular facts concerning the actions complained of have been ascertained.

AS A SECOND CAUSE OF ACTION FOR REMOVAL OF INDIVIDUAL DEFENDANTS AS TRUSTEES, AND FOR INJUNCTION, PLAINTIFF ALLEGES:

14. Paragraphs 1 through 13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Second Cause of Action.

15. Plaintiff is informed and believes and thereupon alleges that defendant Herbert W. Armstrong is 86 years of age; that he has suffered a heart attack; that he no longer resides in California; and that he is not in daily control of the operations of the Church, the College or the Foundation. The exact nature and

extent of his involvement and participation in the diversion of charitable funds hereinabove alleged, either at the present time or in the past, is currently unknown to plaintiff, but is peculiarly within the knowledge of the defendant Armstrong and the other defendants. Plaintiff will ask leave to amend his complaint to show the true facts when the same have been ascertained.

16. Plaintiff is further informed and believes, and thereupon alleges, that for all practical purposes, the financial affairs of the Church, the College and Foundation are now and have for some time been controlled by the defendants Stanley R. Rader, Osamu Gotoh, Ralph J. Helge, Robert Kuhn, Raymond L. Wright, and Henry Cornwall.

17. In addition to his official capacities described above in paragraph 9, Rader has claimed additional power and authority since January 4, 1979 by reason of a directive purportedly issued on that day by the defendant Armstrong, a copy of which is attached hereto and incorporated herein as Exhibit 6.

18. Since this action was filed in January 1979, defendants Rader and Helge have done everything within their power to deny plaintiff access, not only to the books and records of the Church, College and Foundation, but to individuals with knowledge of the operation and financial affairs of said charitable entities.

19. Plaintiff has been endeavoring since January 31, 1979, when this court first so ordered, to examine Rader under oath in deposition concerning his fiduciary relationship to the Church, College and Foundation, and the manner in which he has carried out his responsibilities. Rader failed and refused to appear until further ordered to do so on April 3 and 4, at which time he refused to answer proper questions, and ultimately announced unilaterally that he was leaving the deposition and would not participate any further therein. A copy of the transcript of Rader's deposition is being lodged with this court in connection with plaintiff's Motion to Compel Discovery, and is hereby incorporated by reference and made a part of this complaint.

20. By reason of each and all of their acts and omissions hereinabove related, the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge have failed and refused to comply with the trust which they have assumed; each of them has departed and caused the Church, College and Foundation to depart from the charitable purposes he and they were bound to serve; and each of said defendants should be removed from all responsibility in connection with the Church, College and Foundation.

21. Further, plaintiff is informed and believes, and therefore alleges that the said defendants have caused the Church, College and Foundation to enter into various purported contracts of employment and other contracts with each of the said trustees, providing for compensation and reimbursement of expenses. Plaintiff alleges that all of said contracts were entered into by the Church, College and Foundation without sufficient consideration and under undue influence, and without proper corporate authority; and alleges that each of said contracts should be cancelled and determined to be null and void. A copy of the Employment Contract of Stanley R. Rader dated July 30, 1976 is attached hereto, marked Exhibit 7, and is incorporated herein by this reference.

22. Plaintiff further alleges that each of the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge should be perpetually enjoined and restrained from serving as officers or directors, or any other capacity, with respect to the Church, College or Foundation or any other California charitable trust or organization.

AS A THIRD CAUSE OF ACTION FOR ORDERS REQUIRING COMPLIANCE BY THE CHURCH, COLLEGE AND FOUNDATION WITH CALIFORNIA LAW PERTAINING TO NONPROFIT CORPORATIONS ORGANIZED FOR CHARITABLE PURPOSES, OR FOR OTHER APPROPRIATE RELIEF, PLAINTIFF ALLEGES:

23. Paragraphs 1 through 13 of the First Cause of action, and paragraphs 15 through 22 of the Second Cause of Action, are hereby incorporated by reference into and hereby made a part of this Third Cause of Action.

24. By virtue of the facts hereinabove alleged, the defendant charitable entities have claimed the benefits of incorporation as nonprofit corporations organized for charitable purposes under the laws of the State of California which benefits include among others the substantial tax subsidies and exemptions hereinabove referred to; but the said charitable entities have failed in numerous respects to comply their obligations under said laws, as follows:

(a) Claiming that their organization is "hierarchical," the charitable entities have never been subject to the governance of any board of directors, board of trustees or other independent body, authorized and empowered to supervise and preserve charitable funds collected and held by them as required by law;

(b) Notwithstanding that the bylaws adopted by the charitable entities called for a vote of the members on numerous matters of importance, including amendment to the articles and bylaws, dissfellowshipment of members and other matters, no member of said charitable entities has ever voted or been permitted or requested to vote on any matter and no vote of the members has ever been held on any subject. In this connection, plaintiff is informed and believes, and thereupon alleges, that although statements were filed with the Secretary of State reflecting a purported vote of the membership on certain amendments to articles of incorporation of the defendant Church, no such vote and no such election was ever held, as the defendants herein are well aware.

(c) The defendants have taken the position that their bylaws may be altered or entirely disregarded whenever it suits their purposes, since said bylaws are "viewed only as guidelines, which are subject to spiritual interpretations (by defendants) and are subordinate to the higher law of God." A copy of the Declaration of defendant Helge, dated January 11, 1979 and filed with this court on or about January 12, 1979, is attached hereto as Exhibit 8 and is hereby incorporated by reference and made a part of this complaint.

(d) Claiming that all decisions of the defendants Armstrong and Rader are "religious" or "Spiritual," including all decisions affecting the disposition of charitable trust funds collected and held by the Church, College and Foundation, defend-

ants have taken the position that all of their financial decisions and expenditures, including the disposition of funds for their personal use and benefit, is protected and exempted from review or scrutiny by anyone, including this court, by virtue of the First Amendment; and have thereby claimed and continue to claim that they are entitled to dispose of charitable funds as they please.

25. The defendants Church, College and Foundation should be required by this court to comply with their obligations under the laws of the State of California pertaining to nonprofit corporations organized for charitable purposes in all respects, including among others the following: (a) The Church, College and Foundation should be required to select a board of directors, board of trustees, or other board authorized and empowered to oversee and supervise its financial affairs (as distinguished from its ecclesiastical or spiritual affairs), in such manner as to provide reasonable assurance that the charitable trust funds collected and held by such charitable entities will be applied solely to the charitable uses to which they were donated, and will not be diverted or misapplied for the personal benefit of any individual, or for any other improper purposes; (b) The Church, College and Foundation should be required to take such steps as may be necessary or appropriate to keep and maintain proper records of their financial and business transactions, and to prepare and cause to be rendered periodic accountings of their financial and business affairs as required by law; (c) The Church, College and the Foundation should be required to take such steps as may be necessary or appropriate to prevent the dissipation of charitable trust funds in the future, and to

recover such charitable trust funds as have previously been allowed by them to be dissipated or diverted by improper purposes.

26. If and to the extent the Church, College and Foundation cannot be made to comply with their legal obligations in exchange for obtaining the benefits of their status as charitable California corporations, the court should make such other orders and grant such other relief as may be necessary or appropriate under the circumstances to preserve the charitable funds which have been accumulated by them, and which are presently entrusted to their care and custody.

AS A FOURTH CAUSE OF ACTION FOR RECEIVER, PLAINTIFF ALLEGES:

27. Paragraphs 1 through 13 of the First Cause of Action and Paragraphs 15 through 22 of the Second Cause of Action and Paragraphs 24 through 26 of the Third Cause of Action, are hereby incorporated by reference into and made a part of this Fourth Cause of Action.

28. Based on limited and sporadic statements issued by defendants to the membership of the charitable entities, plaintiff is informed and believes, and on that basis alleges, that they receive approximately $70 million per year in contributions, and that they have a net worth of approximately $80 million. Most of their net worth is held in the form of real estate.

29. Plaintiff is informed and believes, and on that basis alleges, that between January 1, 1975 and the present date, the charitable entities have spent and continue to spend at least $1 million more each year than they receive in contributions and, for that reason,

have been forced to liquidate some of their holdings in order to defray their current expenditures. All the excess of expenditures over receipts is attributable to the individual defendants' pilfering of the revenues of the charitable entities and their misappropriation of charitable assets to their own personal use and benefit, which pilfering and misappropriation continues to this very day on a massive scale. So long as the individual named defendants remain in full, effective and exclusive control of the business affairs of the charitable entities, they alone will continue in the future, as they have in the past, to determine the nature and extent of all their expenditures.

30. Plaintiff is informed and believes, and on that basis alleges that during the last six months, as part of their program of misappropriating the assets of the charitable entities to their own use and in order to facilitate said misappropriation, the individual defendants have been liquidating the properties of the charitable entities on massive scale; and that in Southern California alone, over twenty parcels of property belonging to one or more charitable entities have been sold in the last year, many of them at prices well below their market value.

31. Plaintiff is further informed and believes, and on that basis alleges that one of the largest properties of the College is a 1600-acre parcel in Big Sandy, Texas, which is worth substantially in excess of $10.6 million; yet the individual defendants have been attempting to sell the aforementioned parcel to a third party for approximately $10.6 million; and these defendants have attempted to conceal the true worth of the Big Sandy property, and have instead published false statements, known by them to be false, to the

effect that the property aforesaid is worth only about $8 million. All these statements and activities are part of their effort to convert the assets of one or more of the charitable entities into a form in which they may be more easily appropriated to the personal use and benefit of the individual defendants. Further, plaintiff is informed and believes that the defendants have established no procedures or safeguards to ensure that the proceeds of sale of the Big Sandy property, which belong to the College and which ought to be used exclusively for charitable and educational purposes, will be applied to that charitable use; but instead, defendants have announced publicly their intention to "get out of the college business," and to divert the proceeds of said sale to the Church and the Foundation, and to uses other than those for which they are entrusted.

32. Plaintiff is further informed and believes, and thereupon alleges, that the individual named defendants, in an effort to frustrate discovery of their wrongdoing and to obscure the facts, have caused and are causing the written records of their dealings to be removed from the Pasadena offices of the defendant corporations, and to be shredded and destroyed; and that if said removal and destruction are allowed to continue, it may never be possible to develop a true and complete accounting of the finances of the charitable entities during the time period complained of.

33. Since this action was commenced on January 2, 1979, and after a receiver was appointed herein, the individual defendants have pursued a course of conduct designed to divert donations, funds and assets of the charitable entities to themselves at Tucson, Arizona and elsewhere; and thereafter to apply said funds for their personal use and benefit in various ways,

including the appointment of numerous firms of attorneys to represent their personal interest while ostensively acting as counsel for the charitable entities. In this regard, individual defendants have purported to effect an amendment to the bylaws since the commencement of this action, granting them alleged indemnification for their legal expenses, not only in connection with the instant action and any other civil action which has been instituted by them or against them in the state and federal courts, but also for any expenses they may incur in defending against criminal charges arising out crimes or alleged crimes committed by them against the charitable entities (as set forth at pages 11 and 12 of the purported bylaws attached to the Declaration of Helge, Exhibit 8 to this complaint). Plaintiff is further informed and believes, and thereupon alleges that the defendants have already paid or incurred legal expenses in connection with the present action and related litigation of nearly $1 million, all of which they have paid or intend to pay out of charitable funds properly the property of the charitable entities herein.

34. The appointment of receiver pendente lite for the charitable entities is necessary forthwith to prevent the continued misappropriation of charitable funds and assets to the personal use and benefit of the individual defendants; to halt the imminent and massive selling-off of valuable properties at prices well below their market value; and to prevent the further destruction of financial and business records of the charitable entities and to conduct an independent investigation of claims which the charitable entities may have against the individual named defendants and others, and thereafter to file and pursue such suits and actions on behalf of the charitable entities as may be appropriate.

AS A FIFTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF PLAINTIFF ALLEGES:

35. Paragraphs 1 through 13 of the First Cause of Action, 15 through 22 of the Second Cause of Action, 24 through 26 of the Third Cause of Action, and 28 through 33 of the Fourth Cause of Action are hereby incorporated into and made a part of this Fifth Cause of Action.

36. The Receiver will require access to the books and records, and to the administrative facilities, of the charitable entities in order to discharge his duties, and in order to protect and preserve their assets pendente lite; but the individual named defendants threaten to deny such access to any person other than themselves, and have demonstrated an intention to remove and destroy said books, records, and facilities, rather than to let any other person see them; and unless enjoined and restrained from doing so by this Court, they will do so, and will not yield up the said assets and records to the receiver.

37. The individual named defendants are engaged in an on-going program of liquidation of charitable assets, and have already entered into agreements to sell many of said properties at prices well below their market value; and unless they and those with whom they deal are enjoined and restrained from doing so by this Court, they will sell, transfer, mortgage, and encumber said properties without providing any safeguards for their preservation and use for the charitable purposes impressed on such assets.

WHEREFORE PLAINTIFF PRAYS:

1. For an order requiring defendants to make a full and complete accounting to this Court of the

affairs of the defendant charitable entities from January 1, 1975 through the date of said accounting; and for a further accounting of the third tithe, and of all transactions between any of the defendant charitable entities and any of the individual defendants or the defendant for-profit entities, from January 1, 1970 through the date of said accounting;

2. For an order removing the defendants Rader, Gotoh, Kuhn, Wright, Cornwall, and Helge from holding any office or employment in or under the defendant charitable entities, and cancelling and nullifying any contracts of employment which may have heretofore been entered between them and said entities and further enjoining and restraining said defendants from holding any office of employment under the said charitable entities in the future, or in or under any California charitable corporation trust or charitable organization;

3. For an order directing the defendants Worldwide Church of God, Ambassador College, Inc., and Ambassador International Cultural Foundation to comply with their obligations under the laws of the State of California pertaining to nonprofit organizations organized for charitable purposes; and in the event of their failure so to comply, for such additional equitable relief as may be necessary, appropriate or requisite in the premises to secure the preservation and proper application of the charitable funds presently in their possession and under their control;

4. For an order appointing a receiver pendente lite to take possession, until further order of this Court, of all the property of the defendant charitable entities aforesaid, and of their books and records, and empowering him to take such actions as he deems, in the reasonable exercise of his discretion, appropriate

to recover property and assets wrongfully taken from them, and to prevent the further dissipation of charitable property and assets, said power to include without limitation the power to bring lawsuits in the name of the charitable entities, and to retain independent accountants, lawyers, and other professional assistants to assist him in the prosecution of such lawsuits;

5. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from interfering in any way with the actions of said receiver, and requiring them furthermore to yield up to said receiver all the books, records, and administrative facilities of said charitable entities;

6. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from selling or mortgaging, or asserting ownership in any other way, over the property or assets of any of the charitable entities, except as the court-appointed receiver may allow,

7. For costs of suit herein;

8. For such other and different or further relief as to this Court may seem just and proper.

DATED: April 12, 1979.

GEORGE DEUKMEJIAN, Attorney General
LAWRENCE R. TAPPER,
LAUREN R. BRAINARD,
Deputy Attorneys General
By /s/ Lawrence R. Tapper
LAWRENCE R. TAPPER
Deputy Attorney General
Attorneys for Plaintiff.

APPENDIX B.

From the January 10-13 Hearing for Appointment of Receiver:

Pages 141-147:

THE WITNESS: Stanley R. Rader, R-a-d-e-r.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Rader, just to begin with, I noted a moment ago, from what Mr. Browne said and what you said, that members of the church prefer to affirm and not to swear; is that correct?

A. That is correct.

Q. Is there some religious tenet of the Church of God against swearing?

A. Yes.

MR. BROWNE: Objection. I don't believe—

THE COURT: The objection is sustained. It is irrelevant.

Q. BY MR. CHODOS: Mr. Rader, are you the man—

May I approach the witness, Your Honor?

THE COURT: All right.

Q. BY MR. CHODOS: Are you the man who took this affidavit that was prepared for Mr. Armstrong's signature to Tucson to have him sign it, the one that was filed in the court?

A. No.

Q. Did you see it before it was filed with the court?

A. I'm not sure if I saw it before it was filed with the court, no.

Q. It starts out and says:

"Herbert Armstrong being duly sworn upon his oath deposes and states."

And at the end it concludes, "subscribed and sworn to before me this 5th day of January, 1979," and has the signature of a notary public.

Mr. Rader, in your acquaintance with Mr. Armstrong, does he swear or does he affirm?

MR. BROWNE: Objection, Your Honor. It's irrelevant.

THE COURT: Sustained.

Q. BY MR. CHODOS: Mr. Rader, Mr. Browne mentioned your employment contract. Do you have a copy with you?

A. No.

MR. BROWNE: I do.

MR. CHODOS: Perhaps you could give one to the witness.

MR. BROWNE: Shall I give one to the witness, Your Honor?

THE COURT: Yes, please.

MR. BROWNE: For the record, I'm handing the witness the document on the stationery of Worldwide Church of God, dated August 1, 1976, signed by Herbert Armstrong, followed by employment and consulting agreement, numbering 18 pages, followed by employment and consulting agreement addendum, one page.

MR. CHODOS: Can I have a copy to look at?

MR. BROWNE: I haven't collated them all. If you will wait a second.

I have given a copy to counsel, Your Honor.

THE COURT: All right.

Q. BY MR. CHODOS: Mr. Rader, is that the employment contract that as far as you are concerned is presently in force between you and the church?

A. Yes.

Q. The contract says—

Your Honor, I would like to mark that as Exhibit 3, I believe it is.

THE CLERK: Plaintiffs' 3, Your Honor.

THE COURT: It is marked.

MR. CHODOS: 1 and 2 were introduced at the earlier hearing, Your Honor.

1 was an authorization by Judge Weisman, and 2 was the original press release signed by Mr. Armstrong appointing Mr. Cole—

THE COURT: All right.

Q. BY MR. CHODOS: Do you have a pencil, Mr. Rader?

A. A pen.

Q. Just put a 3 in the lower right-hand corner of the first page in a circle.

A. (Marking.)

Q. Thank you, Mr. Rader.

Mr. Rader, this document indicates that it was made and entered into on the 30th day of July, 1976 between you and the church; is that correct?

A. That is what the contract says.

Q. Is that the truth?

A. I'll stand on the written record.

Q. And—

A. This is what it says. It's signed by me and Mr. Armstrong.

Q. Mr. Rader, my question was did you sign it on July 30, 1976?

A. I can't remember that. I told you I'll stand on what the paper says.

Q. Mr. Rader, who drew this contract?

A. This contract was drawn probably by a young associate in the firm of Ervin, Cohen and Jessup after discussions with me.

I think his name is Greg somebody. I don't know his last name.

Q. Gittler?

A. No.

Q. And was Ervin, Cohen and Jessup representing you in that matter?

A. No.

Q. Who were they representing?

A. I asked them to help to prepare these documents based upon instructions that had been given to me by Mr. Armstrong, and contracts with us prepared for Mr. Armstrong for his son Garner Ted Armstrong and for me all at the same time.

Q. In other words, there were three contracts prepared at the same time.

Were they all prepared by Ervin, Cohen and Jessup?

A. They were, to my knowledge, put into final form for Mr. Armstrong by the firm of Ervin, Cohen and Jessup, by a particular man named Greg somebody, whose last name I can't recall.

Q. And, Mr. Rader, you were the individual, were you not, who transmitted to Ervin, Cohen and Jessup's

firm the information as to what to put in these contracts for the three people?

A I told Ervin, Cohen and Jessup's firm what provisions, in general, Mr. Armstrong wanted, what he was trying to accomplish by the employment contracts for each of the people. And I told them to put it into good form, and they did so.

Q Now, on page 2, Mr. Rader—sorry—page 1 of the agreement, in paragraph A, it recites that since March 1975, which is a year and three months earlier than the date of this agreement, it says "Rader has served as and is presently serving as a director, executive vice president, executive director, vice president for financial affairs, secretary-treasurer and general counsel for the church and for its related entities."

Do you see that quote?

A Yes, very clearly.

Q And you were serving in all those capacities at the time this agreement was drawn up and signed, weren't you?

A Yes. But we would have to indicate which entity we are talking about and make specific which title I had in each one of the entities.

Q We will come to that in a minute.

Now, Mr. Rader, you were the general counsel for the church. Was that you, yourself, or was that your firm of Rader, Helge and Gerson?

A The firm of Rader, Helge and Gerson is merely an association of three lawyers, and Mr. Helge is the person who deals primarily with the church and its related affairs as these problems come up.

* * *

Pages 150-171:

Q Mr. Rader, who advised the church about the advisibility or the propriety or desirability of this contract?

A Mr. Herbert Armstrong is God's apostle. He is Christ's representative here on earth at this time. He, by the powers that have evolved upon him spiritually and which, as I understand, after constant review with my co-counsel, Mr. Helge, he has the power to hire and fire, set rates of compensation, things of that nature, and has done so consistently for 46 years.

Q Mr. Rader, he is not a lawyer, is he, Mr. Armstrong?

A No, sir, he is not a lawyer.

Q Did he have any other lawyers advising him besides you and Mr. Helge about this matter?

A Mr. Herbert Armstrong calls upon lawyers when and if—

THE COURT: Mr. Rader, I think it will help us all if you will listen to the question. You are a lawyer.

THE WITNESS: All right.

THE COURT: All right.

THE WITNESS: Can you repeat the question, please.

MR. CHODOS: I'll repeat it.

Q. Did he have any other lawyer besides you and Mr. Helge advising him about entering into this contract from the church when he did so?

A. Not to my immediate first-hand knowledge.

Q. Mr. Rader, there have been other transactions between you and the church in the past few years, the purchase of your home and so on; is that correct?

A. In which years?

Q. Let's take your home on Loma Vista, Mr. Rader.

The home on Loma Vista was originally purchased by the church with church money; is that correct?

MR. BROWNE: Objection, Your Honor. Let me tell you why I'm objecting here.

It's too remote. I'll offer to show that the home was purchased in 1971, and we are prepared to go into that transaction—it occurred eight years ago—to show how the home was purchased, how Mr. Rader assumed the obligations, the fact the money of the sale of the previous home went into it.

The occurrence in 1971 does not have the immediacy for this hearing. I think this Court wants to know what has happened in the last 90 days, what has happened in the last 60 days.

THE COURT: Mr. Browne, we can't separate it to that extent. I think some background is going to be necessary.

And I am going to have to rely on the good judgment of counsel, both of you, not to enlarge this to the full trial on the merits. Some background is going to be necessary.

MR. BROWNE: I think eight years ago is—

THE COURT: It is a big asset he is talking about, and I think he is entitled to go into that, but only cursorily.

MR. CHODOS: If I can have 20 minutes I'll be through with this part.

THE COURT: Another comment I want to make, gentlemen, and that is going to help us move this

along, and that is if you are going to make an objection, you make your objection in legal form and stop. If I require any argument, I will let you know.

Q. BY MR. CHODOS: Mr. Rader, the question was, in 1971 the church bought the house at 840 Loma Vista; is that correct?

A. That is not precisely correct.

Q. Originally the title was put into your name; is that correct?

A. Title was in my name upon—

Q. You have answered the question.

A. Yes.

MR. BROWNE: Your Honor, objection. Can the witness give an answer, and if it requires an explanation let him do it without counsel saying, "You have answered the question"? We are on a fact-finding mission.

THE COURT: All right. Mr. Chodos, give him a chance to explain if he so desires.

Q. BY MR. CHODOS: When the property was originally acquired, was the title put in your name?

A. When the property was originally acquired the property was put in my name. And that was under the specific direction and authorization of Mr. Herbert W. Armstrong who actually selected the home.

Q. All right. Now a few months after—

The money for buying the property came from the church funds, didn't it?

A. The money for the purchase of the property, as I recall, was borrowed on a short-term basis from the United California Bank for the purpose of buying the house for cash.

Q. It was borrowed by the church and then paid to buy the house?

A. That's correct.

Q. Now, Mr. Rader, a few months after the house was originally bought, you quitclaimed the property to the church, didn't you?

A. That's correct.

Q. Then about a couple of years later the property was transferred by the church into your name again; is that right?

A. No. Approximately one year later, when the permanent financing was arranged, I quitclaimed the property to the church so that the financing would be available once it became impossible for me, as an individual, to acquire it all by myself.

After the financing had been arranged for, as my affidavit indicated, the property was then transferred to me, I believe, January 1972, or approximately thereof, and I then assumed some mortgages, gave back a second mortgage, and transferred other property to the church.

Q. Mr. Rader, at the time that all this was happening, your firm was providing legal counsel to the church, and your other accounting firm was providing accounting services to the church; is that right?

A. In 197.... —

Q. '71 and '72.

A. '71 and '72 I was representing the church as a lawyer.

Q. Did Mr. Armstrong or the church have any independent counsel at the time of those transactions?

A. Not to my actual knowledge, but it is quite possible that they did.

MR. CHODOS: Move to strike the part about it is quite possible that they did.

THE COURT: Speculation, and it will go out.

Q. BY MR. CHODOS: Now, Mr. Rader, when you—in 1974, October of 1974, the property was conveyed by the church to you and Mrs. Rader, was it not, in exchange for your assuming a $218,000 liability on the existing loan and giving back a second of $145,000?

A. I do not believe that 1974 is correct, Mr. Chodos.

I said the property was conveyed on or about January 1972.

Q. All right. In any event, Mr. Rader, since the property was occupied by you in the first instance, it is true, is it not, that the church has paid all the payments for the mortgage, the maintenance, the furnishing having to do with that property?

A. Not true, Mr. Chodos.

Q. The church has paid the charges, haven't they?

A. In some years.

Q. And not in others?

A. That is correct.

Q. How did it come to pass that they paid in some years and not in others?

A. To—that will involve a theological explanation, which I would be happy to go through, Your Honor. It would take quite some time, and we would have to call Mr. Helge—

Q. Mr. Helge to give the theological explanation?

A. And the legal aspect of it.

Q. Are you a minister of this church?

A. No.

Q. You have been baptized into it in 1975?

A. That is correct.

Q. Mr. Rader, do you know how much money the church put into this property?

THE COURT: The house?

MR. CHODOS: The house.

MR. BROWNE: Objection. I don't understand. You mean at the original time of purchase?

Q. BY MR. CHODOS: No. Up until now, up until you sold it.

A. It was my understanding, Mr. Chodos, that any payment made to me or for my benefit will be reflected on the books and records of the institution.

THE COURT: If you don't know the answer, state you don't know.

THE WITNESS: I—well—I don't.

Q. BY MR. CHODOS: It is somewhere around $800,000, isn't it, Mr. Rader?

A. I wouldn't think so.

Q. $500,000?

MR. BROWNE: Objection, Your Honor. I think the question is asked and answered.

THE COURT: If the witness knows, he can so state.

THE WITNESS: I don't know.

Q. BY MR. CHODOS: Mr. Rader, in any event, you and Mrs. Rader sold this property in the summer of last year; did you not?

A. That's correct.

Q. And the sales price was $1,800,000?

A. That's correct.

Q. And you have kept that money, that didn't go to the church; isn't that right?

A. That is correct.

Q. Now, at any time, Mr. Rader, was there any independent advice to Mr. Armstrong or to the church concerning your ownership or sale of the house on Loma Vista that you know of?

A. I can't answer, because I don't know.

Q. All right. Now, in addition, Mr. Rader, the house has—the church has bought you a house in Tucson; is that correct?

A. I am using a home in Tucson that was purchased by the church; title is in my name.

Q How much did that house cost the church, Mr. Rader?

A Approximately $150,000.

Q The church paid for furnishing it, correct?

A It was bought furnished and a few items were added.

Q Mr. Rader, in addition to the house in Tucson, you and Mrs. Rader also own a house in Pasadena?

A That's correct.

Q That is the house you bought from the church; is that correct?

A That is correct.

Q You paid the church about $225,000 for that house a few months ago, correct?

A That is correct.

Q And the way you did that was you paid $75,000 cash, and gave the church back a deed of trust for about $150,000; is tha right?

A Initially, but 60 days later the one fifty-two was paid off.

Q Now, Mr. Rader, does the church—has the church paid for the cars that you drive?

A I am entitled to—

THE COURT: Listen to the question, Mr. Rader. Just listen to the question.

THE WITNESS: Well, I don't know. I would have to check my employment contract.

Q BY MR. CHODOS: Do you have an Aston Martin and Porsche?

A Those are mine.

Q Did the church pay for those?

A No.

Q Mr. Rader, I would like to go back to something that you mentioned a little while ago on the matter of your different roles that you play.

You have been, as I understand it, Mr. Rader, you and your law firm, Rader, Helge and Gerson, have been counsel for the church for many years; is that correct?

A The association of Rader and Cornwall and—excuse me. Rader and Helge and Gerson have represented the church and its related entities for a good many years, yes.

THE COURT: Mr. Rader—

THE WITNESS: It is an association; it is not a partnership. It is very important.

THE COURT: I think you will save us all some time and expedite this if the question is susceptible

to a yes or no, just answer yes or no. You need not repeat the whole question. All right?

THE WITNESS: Yes.

Q BY MR. CHODOS: Mr. Rader, in addition to that, you have been a member and founding member of the accounting firm of what is now known as Rader, Cornwall, Kessler and Palazzo; is that correct?

A Yes.

Q As I understand it, Mr. Rader, in addition to that, you organized an advertising agency called Worldwide Advertising, Inc., which acted as the advertising agency for all the church's media purchases, time purchases?

A Yes.

Q And in addition to that, Mr. Rader, you organized an entity known as Mid-Atlantic Leasing, or something like that, which purchased airplanes and leased them to the church, is that correct?

A Yes.

Q And let me ask you, Mr. Rader, in connection with any of these activities or services or supply of assistance to the church that you provided through these various entities, did the church have any independent counsel besides yourself or your firm?

MR. BROWNE: Objection, Your Honor. Irrelevant to the scope of these proceedings.

THE COURT: Overruled. You may answer the question.

THE WITNESS: May I ask Your Honor something? He is using the word independent. Does he mean independent of me or in addition to me? He is not being precise.

THE COURT: I assume he means by independent counsel, counsel other than your firm, which had no connection with your firm, is that correct?

MR. CHODOS: Yes.

MR. CHODOS: Yes.

THE WITNESS: Remember I have asked Your Honor to understand the difference. My firm is not a partnership.

THE COURT: Be that as it may, let's talk about the three people who were associated together.

Bearing in mind that is the context of the question, I think, what is your response?

MR. BROWNE: Objection, Your Honor. Can we have the time frame about this leasing company?

THE COURT: I don't think that is necessary, Counsel.

MR. BROWNE: I think it's 1967, Your Honor.

THE COURT: I don't think it matters.

MR. BROWNE: Ten or eleven years ago?

THE COURT: I indicated to you, Mr. Browne, I think some background is going to be necessary. The quicker we get to it, the quicker we will dispose of the issue now.

MR. BROWNE: May I inquire, Your Honor?

My problem is this. These transactions are brought up. Was Mr. Armstrong independently represented. Now without regard to that answer, I feel compelled to now demonstrate to Your Honor by way of rebuttal they were all fair transactions, that they were proper financially, because I know Mr. Chodos is going to argue just because of the so-called specter of undue influence that we have a problem. And I know that if he gets into those underlying transactions, we are

going to be here a long time. And I feel it's somewhat of an unfair disadvantage in that respect.

THE COURT: I want to assure both of you we are not going to be here for a long time, as I already indicated to you.

Mr. Chodos, you are going to have to move this along. I think you are getting into detail that is not going to assist the Court very much in particular with this ruling.

MR. CHODOS: I asked to have 20 minutes. If I don't spend it all on objections, I will be past it.

THE WITNESS: May I help, Your Honor, in one way?

THE COURT: Yes, sir.

THE WITNESS: I don't know whether Mr. Armstrong has consulted independent counsel. That is because Mr. Armstrong is inclined to consult independently of everybody with other people, and I never know with whom he's speaking at any one time.

THE COURT: Your answer is you don't know.

THE WITNESS: Yes.

Q BY MR. CHODOS: Mr. Rader, a few things about these financial matters.

It's my understanding somewhere in the—Let me ask you a foundation question.

We have in our moving papers, which you have read—

You have read them, haven't you?

A Not completely.

Q We have attached copies of a document—I think it's called the Pastor's Report, which is sort of a mimeographed or offset printed publication of the church.

A Yes.

Q And in those reports there are messages from you; correct?

A That's correct.

Q You are in fact the author of those?

A That's correct.

Q If something appears in the Pastor's Report over your name, that is your statement?

A That's correct.

Q Somewhere in those papers—I'll find it, if you need it—you say you severed all your connection with Worldwide Advertising; is that right?

A In 1975, that's correct.

Q. Is that when you became a full-time officer of the church?

A. And a member of the church.

Q. You don't have anything to do with it now?

A. Nothing.

Q. It's now all owned by Mr. Gerson?

A. Worldwide advertising?

Q. Yes.

A. Is owned by Mr. Cornwall.

Q. Mr. Gerson, what does he have to do with it?

A. Nothing.

Q. He's on the door there as counsel for Worldwide Advertising. Do you know anything about that?

A. Yes. He subleases space from Mr. Cornwall.

Q. Mr. Cornwall is the gentleman of Rader, Cornwall, Kessler and Palazzo? He's the Cornwall in that group?

A. By name, yes.

Q. Now I understand also, Mr. Rader, that sometime a while ago Worldwide Advertising was no longer

—stopped handling the advertising agency function for the church?

A. That's correct.

Q. The church agreed to pay them something like $375,000 for termination damages; is that right?

A. I don't know the details. I was not privy to the transaction. I don't know.

Q. You don't know anything about it?

A. I know something about it, but I never participated in the transaction.

Q. Mr. Rader, can you tell me, did you know that the executive payroll checkbook of the Worldwide Church of God was out at Worldwide Advertising, Inc.?

A. Yes.

Q. The executive payroll records?

A. Yes.

Q. And they were out there a week or so ago?

A. Yes.

Q. What were they doing there, Mr. Rader?

A. The executive payroll had been prepared for some time under the direction of Mr. Cornwall. And Mr. Cornwall at that itme was acting as a certified public accountant.

And Mr. Armstrong's instructions were that the executive payroll should be prepared in that manner. When Mr. Cornwall, as I understand it, retired from the public accounting field, he assigned the duties of preparing that—those payroll checks—which is a clerical function—to someone who had formerly been working under his direct supervision.

Q. Is Mr. Cornwall now an officer of the church?

A. No. Never was.

Q. Does he have any—is he employed by the church?

A. No.

Q. He has no connection with the church organization or college or foundation at all?

A. As I understand it, there is a contract between Mr. Cornwall and the church which had to do with this termination, and he may have rights under the contract for payment as some kind of consultant.

Q. Does he prepare the executive payroll now?

A. No.

I just stated the executive payroll has been prepared for some time by another man who formerly was Mr. Cornwall's employee when he was practicing as a public accountant.

Q. This employee is a—

A. You have to ask that of someone else.

Q. Now, Mr. Rader, on the matter of the leasing company—then we will be off of this by a quarter of 11:00—some years ago, you and others formed a firm of some kind, an entity, to buy an airplane and lease it to the church; is that right?

A. That's correct.

Q. And since that time, you and others have bought more than one plane and leased it to the church?

A. That is correct.

Q. And in fact, there is a plane the church is using now called a Grumman II, that was bought by you and leased to the church; is that correct?

A. Yes.

Q. All right. The church—the terms of the lease were such, were they not, Mr. Rader, in every instance, that if the lease had been fully paid, the lease payments would cover the full purchase cost and an interest

factor or service charge factor, in addition, for the lessor; is that right?

A. They were leases, and whatever the lease provisions would provide—

THE COURT: If you don't know, say you don't know.

THE WITNESS: I don't know.

Q. BY MR. CHODOS: They were at least finance, purchase-type contracts, weren't they?

In other words, the party paying the lease was, in effect, bearing the entire cost of the time purchase; isn't that right?

A. They were leases. They were leases. You would have to examine the documents if you want to say something else about them.

Q. Mr. Rader, do you not know whether the terms of the lease were such that the church's payments were intended to cover the full purchase price, plus a profit to the lessor for providing the financing; isn't that true?

A. It depends on which plane we are talking about.

Q. Well, let's talk about the Falcon.

A. Which Falcon?

Q. How many Falcons were there?

A. There were two.

Q. Let's talk about the first one.

Let's talk about the second one, the most recent Falcon. Isn't it true that the purchase payments were intended to cover the full purchase, the lease payments were sufficient to cover the full price plus?

A. On the second Falcon there were serious limitations on the amount that the lease would give in terms of the difference between the pay out of the lease and the amounts that the lessee would pay.

In other words, no one knew until the end whether such a figure would be paid.

THE COURT: You know what the plane cost, don't you?

THE WITNESS: Yes.

THE COURT: What did it cost?

THE WITNESS: Well, the plane upon the trade-in was about $2.3 million.

THE COURT: What were the lease payments totaled over the period of the lease?

THE WITNESS: They were to be a certain amount per month, but the interest rate was variable and could not exceed a certain amount to the purchaser.

THE COURT: What were the parameters of that?

THE WITNESS: Well—

THE COURT: The lowest and the highest in the form of the lease payments.

THE WITNESS: Well, I don't have the contract in front of me. I can't—

THE COURT: What is the equivalent, basically the purchase price of the plane?

THE WITNESS: Just about; just about.

Q. BY MR. CHODOS: Now, Mr. Rader, in fact, sometime in 1977, the church decided to terminate the Falcon lease; is that right?

A. Yes, in 1977.

Q. And under the provisions of the lease, who drew up that lease, your firm?

A. No.

Q. Ervin, Cohen and Jessup?

A. No.

Q. Who drew it up?

A. The lease was drawn by lawyers in the east, I understand.

Q. Penalty of $620,000 for early termination was paid in 1977, for the termination of that Falcon lease, isn't that right, to the lessor?

A. I'm not sure that that was the amount. I don't know whether it was a penalty, per se.

Q. I will get to that.

A. The lease was terminated, and it is a matter of record.

Q. I will get that to you in just a minute, Mr. Rader.

But while I am at it, the church then bought the Grumman II?

A. No.

Q. They have the Grumman II?

A. They bought the Grumman II in 1970.

Q. Now the church has made all the lease payments on the Grumman II, completed making all the lease payments last year sometime or before; isn't that right?

A. Yes.

Q. Has the title to the Grumman II ever been transferred to the church?

A. Yes.

Q. When did that happen?

A. I think sometime in 1978.

Q. How long after the payments were made?

A. Within the period of time necessary for all the closing documents to be gathered. Mr. Helge, I think, handled that.

* * *

Pages 216-226:

MR. CHODOS: Call Virginia Kineston to the stand.

THE CLERK: Do you wish to be sworn or affirmed?

THE WITNESS: Affirmed is fine.

VIRGINIA N. KINESTON,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: Virginia N. Kineston, K-i-n-e-s-t-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mrs. Kineston, you are Mr. Rader's secretary?

A. That's right.

Q. How long have you acted in that capacity?

A. One year and approximately two months.

Q. You are married to John Kineston, who is his administrative assistant and limousine chauffer?

A. That's correct.

Q. Now, Mrs. Kineston, you have filed two affidavits or declarations in this proceeding, have you not?

A. That's correct.

Q. And, Mrs. Kineston, just to review briefly for background, you were physically on the premises in the fourth floor suite of offices on the morning of Wednesday, January 3, when Judge Weisman first arrived?

A. Yes, I was.

Q. And it is correct, is it not, that someone came to the door at around 9 o'clock, or a few minutes after, and said they had a court order and wanted to come in and take some records?

A. I cannot remember that Mr. Chodos said he had a court order. He shoved a piece of paper in my face and told me that that gave him the authority to come in and confiscate our records.

I asked him if I could have time to call my attorney. He said no, he had to have the records first and then I could call my attorney.

And I told him I haven't read the paper yet and didn't know what it said. And he told me that it gave him the authority to come in and take the records.

And I told him I wasn't doing anything until I talked to my attorney.

Q. That gentleman was Mr. Rafael Chodos?

A. Yes.

Q. You called Mr. Rader first thing?

A. Yes.

Q. He told you not to do anything until the orders were examined by a lawyer?

A. Mr. Rader asked me who it was, and I said I don't know who the people are.

He said is he a private attorney, and I said yes.

And he said, well, we have to get counsel on it.

Q. You then locked the door?

A. No. The door was locked before that.

I opened the door and let him in. I shoved the door and locked it again. I told him I was not letting him in.

Q. Then you locked all the doors to that suite?

A. Correct.

Q. Then shortly afterwards, as your declaration indicates, the agents of the Department of Justice turned off the power to an elevator that runs—private elevator

that runs from that fourth floor suite to the ground floor?

A. Yes.

Q. And somebody was trying to go down that elevator with records?

A. They weren't records that belonged in our office. They had been delivered to us that very morning when our office was under siege, and I wanted them out. They didn't belong to the corporation. They belonged to a legal—you know, some attorneys, and they didn't belong to us.

He told us he was trying to confiscate our records, and I said get them out, they are not ours.

Q. They belonged to Rader, Helge and Gerson?

A. I assumed they were.

Q. That was the church legal office?

A. They are not part of our executive office, no.

Q. Now, Miss Kineston, ultimately the doors were not opened until around 3 o'clock in the afternoon; isn't that right?

A. Correct.

Q. And they were opened by a security man from the college named Mr. Sprouse?

A. Correct.

Q. At that time I came in, and Raphael Chodos came in and some other people came in?

A. A swarm of people came in.

Q. Yes. You have described it as like a Nazi swarm and so on?

A. Correct.

Q. And the first thing you did, Miss Kineston, was call Mr. Rader; isn't that right?

A. No. I did not call Mr. Rader. I called Mr. Helge.

Q. And what did you tell him?

A. I told him that they had broken into the office, that they were swarming all over the place, grabbing things up. They wouldn't give me an opportunity to go through the office with any kind of order whatsoever. They were running in and out of doors.

I was trying to get our secretaries to go with them and escort them to make sure they didn't confiscate things or stick things in their pockets or briefcases.

Q. Now, Miss Kineston, just a couple of other matters.

You learned at some point that there were allegations of paper shredding?

A. Yes, I did.

Q. And you filed a special supplemental declaration; did you not?

A. Yes, I did.

Q. On the Fifth day of January, 1979, for the hearing on Friday evening?

A. Correct.

Q. And what you explain in here is that you are responsible for running the day-to-day administrative matters of our office, and are generally in staff work for Mr. Rader, and at no time have you or any other person working in the office destroyed any document, book, financial record or other matter generated or belonging to the church, foundation or college; is that right?

A. That's probably—that is what I said. Anything that is original, no, I have never destroyed, ever.

Q. Well, let me read you paragraph 3:

"When we moved in the offices we found a small paper shredder, about the size of a waste-

paper basket, in one of the offices which previously had been occupied by an assistant to Garner Ted Armstrong."

A. Correct.

Q. Now, Miss Kineston—

A. It is Mrs. Kineston.

Q. Mrs. Kineston. Mrs. Kineston, have you used the shredder?

A. Of course.

Q. You have used the shredder?

A. Of course I have used the shredder. We get all kinds of weird mail in our office. We get pornography up there. I put it in the paper shredder.

Q. Did you use the shredder on the day that Judge Weisman was out there?

A. I did not.

Q. Did anybody in your office use the shredder on that day?

A. I cannot testify to what other people did. I did not use the shredder.

Q. Well, as a matter of fact, Mrs. Kineston, it is true, is it not, that this shredder was regularly used?

A. In—yes.

Q. In your offices, up to and including the day that Judge Weisman came up there?

A. Of course. I have never denied that.

Q. Well, is there any document that you destroyed in this shredder that you did not include within the following phrase? Let me read you the sentence again from your declaration.

"At no time have I or any other person working in this office destroyed any document, book,

financial record or other matter generated or belonging to the church, foundation or college."

A. May I explain something, Your Honor?

THE COURT: Go ahead.

THE WITNESS: Everything that we have in our office is a duplicate of something that has been generated somewhere else within the college or church confines. Every financial record that I have ever had in that office has usually been generated, sent to me by Mr. Bickett, who is the head of our data processing and accounting firm.

If I have shredded them, it is because we have no use for them. They are totally overwhelmed with files, memo type, in our office. I have never shredded anything that can't be duplicated immediately.

THE COURT: Have you ever thrown anything away without shredding it?

THE WITNESS: Constantly.

THE COURT: Why would you want to shred junk mail?

THE WITNESS: Because we have people that—you have to understand about the organization. We have people within our organization that are not particularly friendly to the organization, but they get the paycheck from them. They like to go through the mail when it comes out of the executive suite and pick up things, and thinking they have got some kind of confidential information.

Usually—I got a letter one day addressed to Mrs. Rader, homemaker, and when I opened it up the filth was incredible, pictures from Hustler magazine and stuff like this. Well, we don't read Hustler magazine.

So I put it in the paper shredder. I am not going to keep things like that in my file.

THE COURT: Anything further?

MR. CHODOS: One more thing.

Q. Do you have someone in your office whose initials are V. S.?

A. Yes, Valerie Searles.

Q. What does she do?

A. She is our file girl, and she is the general office girl for us.

Q. Mrs. Kineston, after we read your declaration, we had some of the shredded contents of your destroyed shredder reassembled.

A. Fine.

Q. And this is one of the papers. This is a copy of one of the reassembled documents.

A. Okay. I understand. I understand what this is about.

First of all, Judge Weisman's name—which she can testify to—this is Judge Weisman's name, was not on the message to begin with, and Mr. Kent McNeil, who called in during all of the confusion up there the day, you know, they were trying to come into the office, and for music of America, he is something. I don't know what it was Valerie said, "I said what does he want?" "I think he wants money."

You have to understand we have a foundation that supports certain, you know, charitable functions, whatever, sometimes crippled children, or whatever, and people will call in and ask us to send them a check in support, or whatever the thing is.

Then during the course of the day, for some reason, Valerie explained it to me, and at this moment I

can't remember the exact explanation. I am sure she can give it to you.

She wrote Judge Weisman's name down on the top of this. More crap is all it was. She was just being cute. You have to know Valerie to understand. She thought that was cute.

Q. I think it is cute too.

A. I do too.

Q. Mrs. Kineston, will you explain this exhibit 7—may I—

THE COURT: May I see it, please.

MR. CHODOS: It is a Xerox of a reconstructed shredded document. We have the original, Your Honor. I think we have even the reconstituted document. The Attorney General would like to keep the original.

Q. We will be through in just a minute, Mrs. Kineston.

We have another reconstituted document from the destroyed one, Mrs. Kineston, which is a copy of a message from Kent McNeil, without Judge Weisman's name on it.

Do you remember seeing that before?

A. I—you are going to have to call Miss Searles. She is the one that wrote the thing.

THE COURT: Do you recall ever seeing it before?

THE WITNESS: Yes, yes. That is the one I recall that has Judge Weisman's name on top of it. I don't recall seeing this one.

MR. CHODOS: This one I will mark exhibit 8.

Q. I want to point out to you not only Judge Weisman's name, it doesn't have the V.S. initials at the bottom.

A. That is not my handwriting.

Q. My question is, can you tell me, Mrs. Kineston, why two copies of a message which was ultimately intended or related to Judge Weisman should have been put in the shredder on Wednesday?

A. I didn't put them in the shredder, so I don't know.

* * *

Pages 229-241:

MR. CHODOS: Call John Kineston to the stand.

JOHN M. KINESTON,

called as a witness by the realtors, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: John M. Kineston. J-o-h-n, M., K-i-n-e-s-t-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Kineston, you are Mr. Rader's chauffer and administrative assistant, are you not?

A. That would be a fair statement, I think.

Q. Mr. Kineston, is it correct that on Wednesday, the 3rd of January, sometime in the middle of the morning or toward noon you took a limousine to the transportation building and took a quantity of documents from the transportation building and put them in the limousine?

A. That is not true.

Q. Did you take any documents from their usual location, from the location where they were on Wednesday to transport them somewhere else?

A. I did not.

Q. You didn't take any documents?

A. I took no documents ever to—in my life have I taken any documents. I don't know what they are in a sense. I don't deal with documents.

Q. All right. And do you have any recollection, Mr. Kineston, of taking the limousine to the transportation building on Wednesday morning and then going from there to the airport at Burbank?

A. I have no recollection of that whatsoever.

Q. All right. Mr. Kineston, did you talk to Mr. Rader any time, say, between 9:00 and 10:30 on Wednesday morning?

A. 9:00 and 10:30?

THE COURT: I take it you are referring to last Wednesday?

MR. CHODOS: Wednesday, the 3rd, yes.

THE WITNESS: This is the day of the raid; is that correct?

Q. BY MR. CHODOS: The day Judge Weisman came out to Pasadena.

A. I did not see Judge Weisman that day.

I did not—I did not have anything to do with any Burbank business. This Burbank business—

As far as I know, I have no knowledge of going to Burbank whatsoever.

Q. That is what you told me a minute ago.

A. State the question again.

Q. Did you talk to Mr. Rader at any time between 9:00 and 10:30 on the morning of the day Judge Weisman showed up in Pasadena?

A. To my knowledge, I did not.

Q. All right. Now, Mr. Kineston, I want to direct your attention to Saturday night and Sunday, the 6th—

Let's talk about the period first from Friday night, the 5th, through Sunday night, the 7th.

A. You will have to guide me very carefully here. I don't recall everything I do hour by hour.

I have been rather busy the last week, so let's get it precise.

Q. I'll resist the temptation.

Mr. Kineston, at any time between Friday night, which is when the first court hearing was held before Judge Foster, you were there?

A. At the court hearing with Judge Foster on Friday night?

Q. That is when I served you with a subpoena.

A. Yes, you served me in a telephone booth outside the courtroom. Yes, that's correct.

Q. After you left the courthouse—that was an evening hearing—and after you left the courthouse and until Sunday night, did you have any occasion to enter or to go to the financial data processing building that the college maintains a couple of blocks north of the administration building?

Do you know the building I am talking about?

A. I will tell you it would have been absolutely impossible, because it was filled with guards.

I went near—before that I remember seeing a guard whom I assumed to be somebody, sort of a plainclothesman. And I—this is not on that day. This is on another day. So I had no reason to go there.

I haven't been anywhere near there since, as far as I know. I haven't been anywhere near the building.

Q. Let me see if I can get straight what you are telling me.

You are saying sometime before the court hearing, the evening hearing in Judge Foster's courtroom, you drove past the data processing building?

A. Sometime prior to that? Well, of course, that would be hundreds of times, of course, in my job.

I would say that I recollect it was prior to that that I remember seeing a guard posted out there. I believe that was on the day originally in question I recall that.

I don't think it's relevant, probably, but I had no reason to go there. I'm simply saying that—

THE COURT: Listen to the question, please, and just answer the question.

THE WITNESS: Yes, Your Honor.

MR. CHODOS: I'll try and get you off the stand in a minute.

THE WITNESS: I think the answer is no.

Q. BY MR. CHODOS: I would like to clarify it a little more.

For our purposes, Mr. Kineston, we can confine ourselves to the period after you learned that Judge Weisman was at the college and that he had security guards, and so on.

After that, but before Judge Foster's hearing, I understand you drove past the data processing facility and you observed that there were security guards there?

A. According to my own testimony that I'm now adding, yes, that's correct.

I did—I don't know there were security guards. I'll be honest about this. I saw a late model car parked out front. It could have been possibly yellow. I don't recall. I don't know who was in it, but it

seemed to me that the gates were closed, which is very unusual.

So I saw this. I saw this. It was long before the period in question. So I'm simply stating that I would have no reason to even think I could get into that building.

Q. Okay, Mr. Kineston. What I'm trying to get at—

A. During your period in question I most assuredly definitely never went near the building.

Q. After you made that observation, you are telling us you never went near that financial data processing building until today?

A. To the best of my knowledge, I can't—

Can't you tell me it's impossible to get into the building, wasn't it?

THE COURT: Now, now, listen to the question, please.

The answer is to your knowledge you never did?

THE WITNESS: Your Honor, I apologize. I have never been in court before.

THE COURT: Go ahead.

Q. BY MR. CHODOS: And you are telling us, Mr. Kineston, that you have never, since you heard Judge Weisman was on the premises—you have not taken or removed any records or anything to do with church records?

A. Absolutely correct. That is true.

MR. CHODOS: Nothing further.

THE COURT: Any questions?

MR. BROWNE: Nothing, Your Honor.

THE COURT: You may step down. Thank you.

MR. CHODOS: Call Mr. Roberson to the stand, Your Honor.

CHESTER ROBERSON,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: My name is Chester Roberson. C-h-e-s-t-e-r, R-o-b-e-r-s-o-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Roberson, are you a member of the church?

A. Yes.

Q. A baptized member?

A. Yes.

Q. Are you also an employee at the church?

A. Yes.

Q. How long have you been employed?

A. 25 years, not including one year I went to college and worked part time.

Q. And what is your job now?

A. At the present I'm a small engine mechanic and have been for the last four or five or perhaps six years. But before that I was a gardener.

Q. Gardener?

A. Right.

Q. And you worked at the college at the campus in Pasadena every day?

A. Yes.

Q. What building do you normally report to work?

A. It's called the transportation building. I work in the rear of it.

Q. Mr. Roberson, you have been in the courtroom the last few minutes and just heard Mr. Kineston testify?

A. Yes.

Q. Do you know Mr. Kineston?

A. Not personally, but I have seen him at least once a week and maybe more often in that building, up in the front of it, when I go to get coffee.

Q. All right. You know who he is and what he does?

A. Yes.

Q. What you mean about when you say you don't know him personally, you mean you are not friendly with him?

A. No. No. And I'm sorry. I don't know what he does. I didn't know that.

Q. All right. In any event—By the way, Mr. Roberson, you are here under subpoena, are you not?

A. Right.

Q. Mr. Roberson, were you at the transportation building on Wednesday, January 3, Wednesday, a week ago?

A. Yes.

Q. And did you see Mr. Kineston at the building on that date?

A. Yes, I did.

Q. About what time was that?

A. The best I can remember it was between 3:00 and 3:30. I went to get a cup of coffee on my coffee break.

Q. What did you observe Mr. Kineston was doing? What did you see him do?

A. When I first observed Mr. Kineston, he was coming from a parked automobile inside of the garage building with something in his hands. What, I don't know.

It was approximately this wide and that thick (indicating). It looked like books, record books, but I don't know what it was.

MR. BROWNE: Objection, Your Honor. I'm going to move to strike "It looked like record books."

He said, quote, I don't know what it was, right after that. And that is speculation.

THE COURT: Describe it. What did you see?

THE WITNESS: Your Honor, what I saw Mr. Kineston have in his hands at that time was about that thick (indicating).

THE COURT: About three inches thick?

THE WITNESS: Approximately.

THE COURT: All right.

THE WITNESS: About that wide (indicating).

THE COURT: About a foot wide.

THE WITNESS: And the same length (indicating).

THE COURT: All right.

Q. BY MR. CHODOS: Mr. Kineston, I am going to show you—I am sorry, I beg your pardon. Please forgive me.

I am going to show you some accounting ledgers that I have in my briefcase.

Were the objects you saw in Mr. Keniston's hands similar to these in any way?

MR. BROWNE: Objection, Your Honor. Now the witness has described what he said he thought he saw, and to lead him with these books—this is his witness. I don't think it is appropriate.

I would object that it is leading. He has described it to the best of his ability.

THE COURT: Overruled.

THE WITNESS: Yes, they did.

Q. BY MR. CHODOS: Now, tell us what happened next.

A. Next, I stepped out of the place I was in before this happened. I was getting a cup of coffee. Then I see a young lady in the stand over there hand Mr. Keniston something. I don't know, again, what it was. It looked like a transmittal envelope that at the place where I have used interoffice transmittal envelopes, and I then say Mr. Archie Hall also was handing something, and I didn't—I couldn't tell what that was.

Q. Now, you identified a lady—you pointed to a lady. You mean the lady here in the courtroom?

A. Yes. I see her. She is a secretary of the transportation department.

Q. April—is it April something?

A. April Cowan.

Q. April Cowan. All right.

Now, then what happened, Mr. Roberson?

A. Then Mr. Kineston handed whatever he had in his hands to a man named Bill—Bill Whitman, and asked him to place it in the Cadillac, that Mr. Kineston had to go to the bathroom. And then Mr. Whitman replied, "Yes, do you want me to fill it up with gas?" And Mr. Kineston says, "No, I'm afraid I will be seen on my way to Burbank. I will pick up gas."

Q. Then what happened?

A. That was the last—oh, yes. Mr. Whitman placed those—whatever it was—in the backseat of the Cadillac on the left side.

Q. Did you see the Cadillac leave?

A. No.

Q. Now, Mr. Roberson, I want to turn your attention to—well, the period after Judge Foster's hearing.

Were you in court at Judge Foster's hearing?

A. Was that Friday?

Q. Friday.

A. Yes, I was.

Q. Now, after that hearing was over, and later on, did you see Mr. Kineston again?

A. You mean on the campus?

Q. Yes, on the campus.

A. Yes, I did. Saturday night I saw him.

Q. All right. Where was he?

A. He was entering what is called the data processing building.

Q. All right. About what time was that Saturday night?

A. The best I can remember, 9 o'clock, in that area.

Q. How did you happen—what were you doing there?

A. I was driving around with another fellow that is in court.

Q. What is his name?

A. Mr. Morgan.

Q. All right. And you were driving around the campus area?

A. Yes.

Q. You are familiar—you know the data processing building and where it is?

A. I know where it is located. I don't know inside.

Q. Now, you say you saw Mr. Kineston near the data processing building?

A. Yes.

Q. Would you tell us what happened.

A. First, Mr. Morgan and I saw four people—no, five people, including what looked like a guard, standing by a car, and they had a flashlight over a hood of this car, and at that time I didn't know who they were. And then we went around the block and came back again, and by that time, four of these men were up at the building itself, the data processing center building off of Pasadena Avenue.

Q. By the way, this guard—there have been references to guards.

Have you observed—strike that.

The college does maintain a security force, does it not?

A. Yes.

Q. And they wear uniforms regularly?

A. Yes, they do.

Q. And they have college security guards?

A. Yes.

Q. All right. Now, in addition to that, since Thursday there have been some security guards employed by Judge Weisman; are you aware of that?

A. I didn't know who employed them. I have seen guards there.

Q. Well, in other words, you have seen uniformed security people that are not college people?

A. Right.

Q. Now, coming back—having that distinction in mind, Mr. Roberson, coming back to Satuday night at 9 o'clock, your first observation.

Was the guard that you saw a college security guard or a different security guard?

A. This guard I saw was dressed as college security guards do, and he also—or someone did—I don't know who—had a college security car parked in the street in front of this building with the lights on.

Q. Now, coming back to your second time around the block.

You say there were four people at the door of the building?

A. Right.

Q. Would you go on and tell us what you saw there?

A. Mr. Kineston was one of the men, and Mr. Bill Whitman was one of the others; another man was a bearded man I did not recognize. The other man was the guard.

Q. What were they doing?

A. They were—we stopped the truck and watched, and they were entering the building.

Q. Did you see them go in?

A. Yes.

Q. Did you—what did you do then?

A. We told the Pasadena police, found a car parked in front of the hall of administration, and reported it to them.

Q. Did you see Mr. Kineston anymore that night?

A. No, I did not.

Q. Now, Mr. Roberson, did you observe any other instances, besides the two you have told us about, of people entering places or handling records or entering places where records were, since Wednesday?

A. No, I have not.

* * *

Pages 258-260:

MR. CHODOS: I would like to call Mr. Morgan to the stand, Your Honor.

THE COURT: Mr. Morgan.

MR. CHODOS: David Morgan.

THE COURT: David Morgan.

DAVID R. MORGAN,

called as a witness by the relators, affirmed and testified as follows:

THE CLERK: Please be seated and state and spell your name for the record.

THE WITNESS: My name is David R. Morgan, D-a-v-i-d, R., M-o-r-g-a-n.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Morgan, you are one of the relators in this lawsuit; are you not?

A. Yes, sir.

Q. And you have filed a declaration in support of the original application for a restraining order and receiver, correct?

A. Yes, sir.

Q. All right. I don't want to discuss those matters with you now, Mr. Morgan. I want to talk only about the events of Saturday night.

Were you in Mr. Roberson's company on Saturday night?

A. Yes, I was.

Q. And were you driving around with him?

A. Yes, sir.

Q. Did you see Mr. Kineston on Saturday night?

A. Yes, I did.

Q. Would you tell the court what you observed of Mr. Kineston on Saturday night?

A. We were driving around the campus, Mr. Roberson and I. We have been long-time friends. And we drove by the data processing center.

We observed a college security car parked there, and there was men inside by another car.

Now, I didn't—I don't know what they were doing there, but they were there. And we went around the block and we come back around the block. We saw them at the door, at the data processing.

And Mr. Roberson was driving. He stopped, and I observed a security guard standing in the door, and I observed Mr. Whitman with a flashlight, and I observed Mr. Kineston, and there was also another party with a beard, but he was in the shadows, you know, the dark. I couldn't—I don't know who it was.

And when we saw this. Mr. Roberson stopped immediately, and when we stopped, Mr. Kineston turned and there was no mistaking it. He must have a twin brother if he says he isn't there, because this party looked identical to him, as far as I could see.

So then Mr.—I told Mr. Roberson, I said, "Them doors is supposed to be locked. It is supposed to be under the—the state is supposed to have control of these buildings."

And we knew there was a police officer in front of the hall of administration that we—because we observed him there.

So we immediately went over there and told the police officers that somebody was trying to get into the building.

* * *

Pages 262-266:

PAUL TULLENERS,

called as a witness by the relators, was sworn and testified as follows:

THE CLERK: Be seated and state and spell your name for the record, please.

THE WITNESS: Paul Tulleners, T-u-l-l-e-n-e-r-s, P-a-u-l.

DIRECT EXAMINATION

BY MR. CHODOS:

Q. Mr. Tulleners, what is your occupation?

A. I'm a peace officer for fourteen years, the last five and a half for the State Attorney General's office as a special agent.

Q. Officer Tulleners, you have handed me a box of material here.

Can you tell me what this is?

A. Appears to be shredded paper to me.

Q. Where did you get it?

A. Out of that waste basket sitting on the counsel table to your left, an electric waste basket combination shredder.

Q. Who gave you the electric waste basket?

A. Given to me by a State policeman on Monday, the 8th of January.

Q. You took the shreds out of this waste basket?

A. Yes, sir, I did.

Q. Did you make any attempt to piece together the shreds that you located in the waste basket?

A. I did.

Q. I take it you weren't able to piece all the shreds together?

A. I made no attempt on the rest of the material that is in that one box.

I believe it's possible, but I think it would consume a considerable amount of time.

Q. I'm going to show you, as soon as counsel is through looking at them, some collections of shredded paper.

THE COURT: Do you anticipate you will need Judge Weisman?

MR. BROWNE: I don't plan on calling him, Your Honor.

THE COURT: Today?

MR. CHODOS: Ultimately I think we will need him, but whether it's today or not, I don't know.

THE COURT: All right. Let's proceed.

MR. BROWNE: I'll stipulate this can come into evidence.

Will that save you some time?

MR. CHODOS: No, Your Honor. The Attorney General may want to keep the originals.

MR. BROWNE: We will stipulate copies may be introduced in evidence.

THE COURT: All right.

MR. CHODOS: I'll put copies in evidence in just a moment.

Mr. Tulleners, I take it this folder of documents was made up by you; is that correct?

A. That's correct.

Q. In essence you have taken the shreds and attached them with Scotch Tape to sheets of paper?

A. After piecing them together, I taped them into the shape shown here.

Q. You laid these each little items on a Xerox machine to take a picture of what you put together?

A. That's correct.

Q. We have here, Mr. Tulleners, about a dozen of these documents.

Can you tell the court about how long it took you to do this?

A. That represents about seven or eight hours' work on Tuesday of this week.

Q. You also dusted the shredder for prints, did you?

A. On Monday evening, yes, sir, I did.

Q. You are now in the process of trying to identify them?

A. Yes.

Q. About how long do you figure it will take to do that?

A. If it's possible, a couple of weeks.

Q. Now, Officer, did you go to the data processing building on Saturday night?

A. Yes, sir, I did.

Q. And did you have occasion to take a look at the roof of the data processing building?

A. Yes, I did.

Q. What did you observe there?

A. Well, I entered the roof from within the data processing center, specifically an area identified on the doors as Spanish department or Spanish language department.

And within that area there was a kind of a maintenance area for equipment, like air conditioning, things like that.

Then I saw a ladder bolted to one wall, a steel ladder.

I climbed that ladder and found there was a hatch to the roof, and the hatch was not secured.

I then went up and looked through that and saw the higher roofline of the shipping department to the east. And as I determined that there was a possibility to gain access to the data processing through that hatch, I pulled the hatch down and padlocked it shut from inside.

Q. About what time was this, Officer?

A. I would be guessing. Sometime between 9:30 in the evening and 11:00 p.m. on the 6th, Saturday, the 6th of January.

MR. CHODOS: Nothing further.

THE COURT: Any questions?

MR. BROWNE: None.

THE COURT: You may step down. Thank you.

* * *

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MR. CHODOS: I would like to talk about that.

I want to show Your Honor and remind Your Honor of some of the things that have happened just before you in the last couple of days. And if you will be patient with me for a few minutes, I'll explain the relevance to your inquiry.

I won't dwell on Mrs. Kineston's testimony, which was throughly impeached. I won't dwell on the fact she told you in a declaration that there had never been any shredding, and when she got on the stand and knew we had her nailed, she did a 180 degree turn, like an Olympic swimmer, without missing a beat.

I won't dwell on Mr. Kineston, who was thoroughly impeached. I want to talk about something more significant.

You now have before you, Your Honor, not one, not two, but you have three different versions of the by-laws of this church. It's the most extraordinary thing I have encountered in all my years of litigation.

On Friday night, Your Honor, Mr. Browne introduced a version of the constitution and by-laws which is a Xeroxed copy, and that is exhibit C.

In that document, your Honor, if you will examine it you will find that in article 3, section 3, before Xeroxing someone has typed up a new clause about this—

THE COURT: I have looked them over.

MR. CHODOS: Let me pursue it a little bit because, Your Honor, we now have this morning the declaration of Ralph Helge telling Your Honor about the true condition of the by-laws. And lo and behold, since Friday night, we have a new clause which just by coincidence is article 12 and relates to indemnification of officers and directors.

And the reason that is significant is Mr. Browne told you here the other day that before Mr. Rader's contract was introduced into evidence that he was entitled to take his fees out of the church because

Mr. Rader had a contract that entitled him to indemnification. But when the contract comes in, it turns out the indemnification clause doesn't cover this kind of lawsuit.

Between Friday and today we have a new indemnification article all of a sudden pasted in that now purports to provide indemnification for this lawsuit, too, and it's as though the president were to sneak into the Library of Congress—

THE COURT: Excuse me. You are really addressing yourself to the question of whether a receiver should be appointed, why a receiver should be appointed.

I have asked you to respond to another issue, and that is the issue solely as to whether or not there is any need immediately for the receiver to be given possession of all the property rather than the right and power to monitor and supervise with the condition of the right to later apply for possession.

APPENDIX C.

Declaration of Lauren R. Brainard.

I, Lauren R. Brainard, declare:

1. I am an attorney at law duly licensed to practice in the State of California. I am a Deputy Attorney General in the offices of George Deukmejian, Attorney General of the State of California, located at 3580 Wilshire Boulevard, Suite 500, Los Angeles, California 90010. If called upon to testify, I would and could competently state as follows:

1. On May 7, 1979, upon motion of the plaintiff the People of the State of California for order compelling Stanley R. Rader to answer questions propounded at deposition and for other relief, Judge Thomas T. Johnson, sitting in Department 80 of this court, ordered that the deposition of Stanley R. Rader recommence on May 29, 1979 at 10:00 a.m. in the offices of the Attorney General. A copy of the reporter's transcript of said proceeding of May 7, 1979 is attached hereto, marked Exhibit "A," and incorporated herein by this reference. Notice of said ruling was given by the plaintiff, the original of which is in the court file.

2. At or about 4:00 p.m. on Wednesday, May 23, 1979 I received in our offices a copy of a Petition for Writ of Prohibition and/or Mandate and/or Other Appropriate Extraordinary Relief; Request for Immediate Temporary Stay, etc. addressed to the Court of Appeal, Second Appellate District. (2nd Civil No. 56345). The petition sought to stay Mr. Rader's deposition scheduled for May 29, 1979. The Petition is voluminous and therefore I have not attached it to this declaration, noting that the court was served with

a copy thereof. It is incorporated therein by this reference as if fully setforth.

3. At approximately 2:00 p.m. on Friday, May 25, 1979 I delivered a short response to said Petition to the Clerk of the Court of Appeals. A copy of that response is attached hereto, marked Exhibit "B" and incorporated herein by this reference.

4. At approximately 2:30 p.m. on Friday, May 25, 1979 Allan Browne, Attorney for the bulk of the defendants and specifically for Stanley R. Rader, telephoned the undersigned. He informed me that Mr. Rader would not appear for his deposition on Tuesday, May 29, 1979, pending ruling by the Court of Appeals on said Petition.

5. At approximately 3:00 p.m. on Friday, May 25, 1979 I received a telephone call from the Clerk of the Court of Appeals. He informed me that the said Petition had been denied. A copy of the order denying said petition is attached hereto, marked Exhibit "C" and incorporated herein by this reference.

6. At approximately 3:15 p.m. on Friday, May 25, 1979 I telephoned Allan Browne. He informed me that Mr. Rader, regardless of the Court of Appeals' decision, was not going to appear for his deposition until the issues raised in said petition were resolved by higher courts. He also informed me that Mr. Rader would not, even if he appeared for the deposition, answer any question but rather would invoke the right against self-incrimination as to each and every question propounded to him. I informed Mr. Browne that the order requiring the attendance of Mr. Rader at this deposition at 10:00 a.m. on May 29, 1979 had not been stayed and that I would seek a contempt order

against Mr. Rader if he did not appear at the pointed time and place for the taking of his deposition.

7. Stanley R. Rader, failed to appear for said deposition on May 29, 1979. Further, no attorney for Mr. Rader appeared for that proceeding.

Executed this 1st day of June 1979 at Los Angeles, California. I declare under penalty of perjury that the foregoing is true and correct.

DATED: June 1, 1979.

GEORGE DEUKMEJIAN, Attorney General
JAMES M. CORDI
WILLIAM S. ABBEY
LAUREN R. BRAINARD
Deputy Attorneys General

/s/ By Lauren R. Brainard

LAUREN R. BRAINARD
Deputy Attorney General
Attorneys for Plaintiff

APPENDIX D.

Withdrawal of Exceptions to Individual Sureties.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California Non-profit Corporation, et al., Defendants. No. C 267-607.

TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY IN THESE PROCEEDINGS:

WHEREAS, of the approximately 899 individual sureties filed in these proceedings to stay the order appointing Receiver of March 16, 1979 totalling $3,205,658, those representing $1,766,109 completely failed to conform with the statutory requirements of Code of Civil Procedure section 1057, plaintiff filed its Notice of Exceptions to Individual Sureties. Included were undertakings which are blank as to the description of the property relied on ($270,612), undertakings containing as a description thereof "personal property" ($128,111), undertakings denominating the property relied on as "cash" ($146,630), undertakings containing inadequate descriptions of real property such as "real estate" ($334,046), undertakings containing inadequate description of bank or savings and loan accounts such as "savings" ($198,593), undertakings containing inadequate descriptions of personal property such as "car" ($521,087), etc.

WHEREAS, during previous proceedings the court has stated that defendants would be given the opportunity to correct any such deficiencies in said undertakings to the extent they are found to be inadequate or insufficient:

PLEASE TAKE NOTICE that plaintiff hereby withdraws its exceptions to individual sureties filed by defendants for purposes of attempting to stay this court's order of March 16, 1979 entitled Order Appointing Receiver Pendente Lite; Injunction Pendente Lite. This Withdrawal of Exceptions is not an admission of the adequacy or sufficiency of said undertakings but rather is done in the interest of saving the parties, counsel and the court from wasting time and engaging in idle acts.

DATED: May 25, 1979.

GEORGE DEUKMEJIAN, Attorney General
LAWRENCE R. TAPPER
JAMES M. CORDI
WILLIAM S. ABBEY
LAUREN R. BRAINARD
Deputy Attorneys General

By
LAUREN R. BRAINARD
Deputy Attorney General
Attorneys for Plaintiff